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## Legislative Assembly of Ontario

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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 27 September 2006

# Journal des débats (Hansard)

Mercredi 27 septembre 2006

**Standing committee on  
justice policy**

Access to Justice Act, 2006

**Comité permanent  
de la justice**

Loi de 2006 sur l'accès à la justice



Chair: Vic Dhillon  
Clerk: Anne Stokes

Président : Vic Dhillon  
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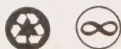
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 27 September 2006

Mercredi 27 septembre 2006

*The committee met at 1002 in room 228.*

## ACCESS TO JUSTICE ACT, 2006

## LOI DE 2006

## SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

**The Chair (Mr. Vic Dhillon):** Welcome back to the standing committee on justice policy.

When we last left off, we were at schedule F, section 19. There are no amendments between sections 19 and 27. If you would like to take a minute to look at those—

**Mr. Peter Kormos (Niagara Centre):** No, I'm fine. Recorded vote, please.

**The Chair:** Okay. Is there any debate?

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Could we have a five-minute recess, please?

**The Chair:** Sure.

*The committee recessed from 1003 to 1008.*

**The Chair:** The committee is called back to order. Mr. Kormos has requested a recorded vote on sections 19 to 27.

## Ayes

Balkissoon, Elliott, Kormos, McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's carried.

Section 28: government motion number 91.

**Mr. David Zimmer (Willowdale):** I move that subsection 28(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "Part III (Regulations)" and substituting "Part III (Regulations) or a predecessor of that part."

**The Chair:** Any debate? Seeing none, shall government motion number 91 carry? Carried.

Any debate on section 28, as amended? Shall section 28, as amended, carry? Carried.

Government motion number 92.

**Mr. Zimmer:** I move that clause 91(1)(a) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"(a) it is printed by the Queen's Printer or by an entity that is prescribed under clause 35(1)(a);"

**The Chair:** Any debate?

**Mr. Kormos:** Just real quick, for information's sake, the Queen's Printer now is a body, or is it—this stuff is contracted out, I presume. Again, this is just the sort of stuff that we get to learn in the course of these types of clause-by-clause hearings.

**Mr. John Gregory:** The Queen's Printer is in fact—the Ministry of Government Services, at present, is assigned to that and takes charge of the printing. I don't know who does the actual physical production, but it's done under the authority of the Queen's Printer, which is the Ministry of Government Services. Legislative counsel may know.

**Ms. Mariam Leitman:** It's Publications Ontario, which is under the Ministry of Government Services. Yes, they do contract out a fair bit of the production, but they're responsible for the content.

**Mr. Kormos:** But is there some in-house production of this sort of stuff?

**Ms. Leitman:** These days of technology—the actual printing out, as I understand it, at this moment is contracted out.

**Mr. Kormos:** That's how I assumed it to be. Then why is there a need for other prescribed entities?

**Ms. Leitman:** It's contracted out, but it's contracted out by the Queen's Printer. The Queen's Printer retains control of the content and the quality. I can't tell you why there's a need, but the issue is that with changes in production and print publication, electronic publication, it's conceivable that one would want to move this elsewhere as government organizations change functions to adapt to technology.

**Mr. Kormos:** The reason I ask is because the Queen's Printer is not a print shop; it is, in effect, the publisher that contracts out to any number of print shops. You understand why I'm saying that the other prescribed entity—the Queen's Printer is a virtual printer, for all intents and purposes.

**Ms. Leitman:** That's right.

**Mr. Kormos:** And that's why I'm questioning the other prescribed entity. What's contemplated? Again, that's sort of a government policy concern.

**Mr. Gregory:** At present, there aren't any plans to do anything. But Publications Ontario, as the sort of public distribution wing of the Queen's Printer, re-examines its business lines from time to time. It could simply say, "Okay, we're doing only things that make a profit," for example. I doubt that's likely, given the other responsibilities it has, but if it did and it said, "Okay. We are doing only glossy pamphlets as Publications Ontario. We're not doing any of the routine public service part of it anymore. That's being shifted over to some other part," we want to be able to say, "Yes, but we need to be able to control how the statutes get published." So we're going to say, "Fine. We can deal with that by a regulation." At present, as far as I know, Publications Ontario, as an emanation of the Queen's Printer, will continue to do it.

**Mr. Kormos:** Of course, the glossy printing is oftentimes the subject matter of questions in question period.

I'm looking at subsection (2) in contrast to sections 30 and 32—no, never mind 30, but especially 32. The disclaimer, which I think we've all seen—right? We've all seen that on statutes that are, for instance, sold through the government bookstore.

**Mr. Gregory:** That's right. You buy a printed consolidation, office consolidation, that says, "Here it is. It's got all the amendments in it. Note: This isn't official."

**Mr. Kormos:** Yes. In other words, you go buy a copy of the Education Act—it's a volume around that thick; I presume you still can over at the Ontario government bookstore—and it's got the disclaimer on it. What are people to do, then, when you've got that, but you've got section 32, "an official copy of a source law"? I presume that that's an official copy. It's not published by Carswell, for instance, or an independent publisher. It's an official Queen's Printer copy. I presume that's what you mean by "source law"—it's an accurate statement of the law, yet you've got sort of the indemnifying quality of the disclaimer. Am I misunderstanding something here?

**Mr. Gregory:** No. What has been going on up to now is that the consolidations and—the source law is the statute as actually enacted. So we enact the Legislation Act; assuming that this bill gets passed and the schedules passed, there is a Legislation Act. That's the source law. As it is amended over time, you look for a consolidated law. What you tend to buy at the government bookstore in print is the consolidated laws—source plus the various statutes. Section 33 deals with the official copy of the consolidated law and basically reflects 32, except it's a little more complex because of the consolidation electronically.

The purpose of the Legislation Act essentially is to say the consolidated law that you get on e-laws is an accurate statement of that law, unless contrary is proved. It's presumed to be an accurate statement, and the disclaimer that is also on e-laws now—if you go on to e-laws and you read it and go down to the bottom of the page, there's something saying "disclaimer" or whatever, and it says the same thing as it says in the printed copies. The purpose after this is in force is to remove that so that it

will not be disclaimed and it will be presumed to be accurate.

**Mr. Kormos:** It's still rebuttable, if you will.

**Mr. Gregory:** Well, subject to rebutting the presumption, absolutely, because somebody could print something off and you could say, "But you've just taken out one subsection that says this doesn't apply to something relevant."

**The Chair:** Leg. counsel, I believe, has a comment.

**Ms. Leitman:** I just want to add one thing, which is in 1996, the assembly amended the Evidence Act so that, in fact, those print consolidations, the big, fat Education Act you're talking about, no longer have disclaimers. They are official.

**Mr. Kormos:** But they're still rebuttable.

**Ms. Leitman:** Everything is rebuttable except the enrolled bill and the filed regulation, yes, but in 1996, we amended the Evidence Act, similar to this, so that unless there was a disclaimer, it was official. And to my knowledge, there's never been a disclaimer since on that print.

**Mr. Kormos:** Okay. Fascinating. So, really, how does one access the bill that's endorsed by the clerk in section 28? Where are those filed, kept?

**Ms. Leitman:** Fortunately, that doesn't tend to happen. People don't ask, although there have been cases in the Commonwealth, one case, where it created a storm because no one knew what the law was. However, from the get-go, from the beginning of the publication of law in Ontario, nothing but the enrolled bill kept by the assembly or the filed regulation kept by the registrar of regulations has complete official status. That's the original. Everything else is unofficial copy, which is to say, "Prove in the absence of evidence to the contrary." For example, the red books that you're used to, the RSOs, the blue books, the annual volumes—

**Mr. Kormos:** And they're gone.

**Ms. Leitman:** No, no, no. They're there.

**Mr. Kormos:** I don't get them anymore.

**Ms. Leitman:** Well, no one does, frankly, because why would you, when you can get it for free online?

**Mr. Kormos:** Because I hate reading a computer screen. That's not reading. Reading is when you have a book with a spine and pages that you turn. Go ahead.

**Ms. Leitman:** We still print them, and this bill requires that they still be printed.

**Mr. Kormos:** Okay, but what happens to the bill that's endorsed by the clerk, the royal assent bill?

**Ms. Leitman:** There are two copies. Tamara, you might know exactly. Do you know where the two are kept?

**Ms. Tamara Kuzyk:** Tamara Kuzyk from the office of legislative counsel. I'd have to check to see. One is sent to the feds, because the secretary there keeps a copy, and then another one—I'd have to check which office here keeps it, but it might be with the clerk.

**Ms. Leitman:** When it comes to regulations, the official copy is with the registrar of regulations.

**Mr. Kormos:** Okay. I'm not going to belabour this. This is just interesting stuff.

Mr. Zimmer, to his credit, is something of a bibliophile. I admire him for that. I don't consider him a Luddite. I consider him a person of significant intellect in regard to his affection for the written word on the printed page. He actually looks at the back and reads that little section that says, "This typesetting is designed by so-and-so and has this history."

If, at some point, somebody could let us know how a member of the public—can you imagine the mischief this could create, far be it from me—because surely the public has a right to access the royal assent bills. Down the road, perhaps you could just let legislative research know or the clerk know, and it can be passed on.

Thank you, Chair. We're ready to proceed with the vote. I have no further comments. Go ahead.

1020

**Mr. Zimmer:** On a point of order, Mr. Chair: I may have misspoken when I made motion 92. I hope I said, "I move that clause 29(1)(a)," or did I say, "92", reversing the—

**Mrs. Christine Elliott (Whitby–Ajax):** You did. We knew what you meant.

**Mr. Kormos:** Yes, you did, but we knew it was just a little dyslexic moment.

**Mr. Zimmer:** It's my mild dyslexia there, just for a moment.

**Mr. Kormos:** I thought it was age, myself.

**Mr. Zimmer:** No, just a touch of dyslexia. Anyway, it's 29(1)(a).

**Mr. Kormos:** We understood.

**Mr. Zimmer:** Thank you.

**The Vice-Chair (Mrs. Maria Van Bommel):** Further debate on government motion 92? Hearing none—

**Mr. Kormos:** Recorded vote.

### Ayes

Balkissoon, Elliott, Kormos, McMeekin, Zimmer.

**The Vice-Chair:** That was unanimous.

Shall section 29 of schedule F, as amended, carry? Carried.

**Mr. Kormos:** If I may, Chair, please, that you proceed all the way through to 33.

**The Vice-Chair:** Seeing there are no amendments to 30 to 33, is there any debate? Hearing none—

**Mr. Kormos:** Recorded vote, so that the vote can reflect any absences from committee attendance.

**The Vice-Chair:** Okay. Shall sections 30 to 33 of schedule F carry?

### Ayes

Balkissoon, Elliott, Kormos, McMeekin, Zimmer.

**The Vice-Chair:** Thank you very much. Now we move to government motion 93.

**Mr. Zimmer:** I move that subsection 34(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "Part III (Regulations)" and substituting "Part III (Regulations) or a predecessor of that part."

**The Vice-Chair:** Debate?

**Mr. Kormos:** A question just for information's sake: Again, I understand the bills that are e-lawed, where you have the grey shaded sections. Laws that are not yet proclaimed, are they in e-laws as well—laws that are enacted but not yet proclaimed?

**Ms. Leitman:** Yes, they are, with an indication that they're not yet in force, whether it's because of not proclaimed or because of delayed effective date. And that practice, which is on our e-laws website now, is mandated to be carried on under this act.

**Mr. Kormos:** Thank you.

**The Vice-Chair:** Further debate? Hearing none, shall government motion 93 carry? Carried.

Shall section 34 of schedule F, as amended, carry? That carries.

Is there any debate on section 35? Hearing none—

**Mr. Kormos:** Yes. Again, just very briefly, one of the issues arising, for instance, around the land titles concerns is the integrity of the computer system. In view of the fact that increasingly people are regrettably relying upon e-laws, although it does give access to the folks out there that they wouldn't otherwise have, how secure is that system? We didn't buy it from MFP or one of the Domis, did we? Do you understand what I'm saying? Is the integrity of that system an issue that's addressed, and addressed on a constant basis?

**Ms. Leitman:** First of all, it is addressed in this bill in that the Attorney General has an obligation to ensure the integrity and accuracy and security, so there is ministerial responsibility. At a practical level, it is addressed constantly—the technology and security is reviewed pretty much daily, and backups, and we've been in touch with other jurisdictions that have legislation websites. We share the knowledge. As you know, it's an ever-changing landscape, so it has to be ever vigilant, but yes, we're very conscious of that.

**Mr. Kormos:** Thank you, counsel. I raise that, Chair, because I'm obviously laying some groundwork for the debate around the land titles system, because notwithstanding all the best-laid plans of bureaucrats and ministers, it seems there are 12-year-old kids out there who can hack into some of the most secure and highly sensitive systems.

**Ms. Leitman:** Mr. Kormos, that indeed is part of why we added the disclaimer provision and insisted that there be print as well.

**Mr. Kormos:** I hear you. Can you imagine the havoc that could be created, though? How is it checked? If somebody were to hack in and change a word, a sentence or delete a subsection, how does the system know that that's happened? Do you understand what I'm saying, Mr. Zimmer? How is it scanned to say that there's some-

thing here that wasn't there yesterday or there's something not here that was there yesterday.

**Ms. Leitman:** At the risk of being beyond my technical expertise, there's a daily comparison of bits and bytes.

**Mr. Kormos:** An input-output sort of thing? Interesting. Thank you, counsel.

**Ms. Leitman:** And there are vigilant citizens who notice when things are wrong.

**The Vice-Chair:** A good thing.

**Mr. Zimmer:** And opposition.

**Mr. Kormos:** Mrs. Elliott's an example.

**The Vice-Chair:** Further debate? Hearing none, shall section 35 of schedule F carry? Carried.

Now we move to government motion 94.

**Mr. Zimmer:** I move that the French version of the heading to part V of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "Pouvoirs de modification" and substituting "Modifications autorisées."

**The Vice-Chair:** Debate? Mr. Kormos.

**Mr. Kormos:** I commend Mr. Zimmer for his effort, and I point out that there was a memo recently circulated indicating that Jonquière intensive language training is now available to members who aren't ministers and can't access their ministerial budgets. It really is a good exercise. Even if one doesn't learn French fluently, one acquires a little bit of linguistic and pronunciation skill. It's a delightful exercise.

Once again, a little bit of an explanation, because what always confounds me—we've done this before in this bill and we've done it in so many other bills. Surely our very talented French-language people are consulted in the first instance, and then we see the changes here like we did with the French version of paralegal—parajuriste, if I recall. Can you help us real quick?

**Mr. Gregory:** In this case, the question was really understanding in our own minds, and sharing that understanding with the French team, the impact of change powers. We have change powers and we have correction powers that are given to chief legislative counsel in this bill, both of them resulting, as I believe I said last week, from the need to replace the process that used to be done in the decennial revisions. Essentially, the first time we said "pouvoirs de modification," and then, after further thinking, we thought, "No, that's not really got it quite right." We did some agonizing on it, saying, "Well, surely that's close enough." The thinking at the end of the day was, "No, that's not close enough. We really have to make this change." It matters to the French team enough that we are taking the time of the committee; there are seven or eight motions that are exactly the same. It was really the difficulty of conceptualizing, "Well, that's a change power, that's a correction power. What can they do with one and what can they do with the other?" and making sure that the French reflected those differences.

**Mr. Kormos:** And we're going to proceed promptly through those amendments. But how does that happen? Is

the consultation not made in the first instance, or is it simply reflection?

**Mr. Gregory:** Sorry, you mean with the French team?

**Mr. Kormos:** Yes.

**Mr. Gregory:** The French team, once the bill is at a stage that we can say, "Yes, this is pretty much what we're going with," is brought in. We don't have a final bill and then say, "Okay, French, over to you." The late stages of the process are done parallel as the French keeps up, and often the English drafting is affected in a certain way. As someone who deals regularly with legislative counsel, I'm sort of used to getting a call saying, "The French team can't really make this expression work. Could we use something else in English?" and the English is modified so that the text makes sense in both languages. This is a case where, unfortunately, because of the complexity of the drafting, that didn't get caught up before the first reading of the bill.

1030

**Mr. Kormos:** Thank you kindly.

**The Vice-Chair:** Further debate? Hearing none, shall government motion 94 carry? Carried.

Government motion 95.

**Mr. Zimmer:** Mr. Kormos, this is another house-keeping motion, involving some facility in French to present the motion. I wonder if you might present the motion.

**Mr. Kormos:** It's not my job to steward government bills, especially sloppily prepared ones, through the process, sir.

**Mr. Zimmer:** I was thinking more so I could copy your exquisite French.

**Mr. Kormos:** It's far from exquisite, but it's still not my job to steward sloppily drafted and ill-conceived government bills through the process. That unenviable task falls upon your shoulders.

**Mr. Zimmer:** I move that the French version of subsection 36(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "modifications" wherever it appears in the following provisions and substituting in each case "modifications autorisées":

- i. in the portion before paragraph 1, and
- ii. in paragraphs 6, 7, 10 and 11.

**The Vice-Chair:** Debate? Hearing none, shall government motion 95 carry? Carried.

Government motion 96.

**Mr. Zimmer:** I move that subsection 36(4) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"Error in consolidation

"(4) If the chief legislative counsel discovers that an error was made in the process of publishing or consolidating a consolidated law,

"(a) in the case of a consolidated law published on the e-Laws website, he or she shall ensure that a corrected consolidated law is published on the e-Laws website; and

"(b) in the case of a consolidated law printed by the Queen's Printer or by an entity that is prescribed under

clause 35(1)(a), he or she may cause a corrected consolidated law to be published in print, if he or she considers it appropriate in the circumstances.”

**The Vice-Chair:** Mr. Kormos.

**Mr. Kormos:** We all recall the notorious amendment to the official Tartan Act, which added one thread to the woof and warp of the tartan. Was that a matter of the original bill that was passed having inaccurately described the tartan, or was that simply correcting the bill? If it was the former, it's obvious that we needed an amendment; if it was the latter, this is the sort of thing I trust where you wouldn't need an amendment. You would simply correct it in the process of publishing or republishing.

**Mr. Gregory:** My recollection of the discussion of the Tartan Act, which was finally corrected in the Good Government Act, is that that would not be the kind of mistake that chief legislative counsel would be correcting. The problem was that the shade of green of one of the strands was improperly described or whatever. To correct that took an act of the Legislature. That's not the kind of error correction we're talking about, really. There's a list of the kinds of corrections that could be made: “t-e-h” appears instead of “t-h-e” for the word “the.” This is one of the reasons for the motion. If that's in print, you look at the print and say, “That's the Ontario Gazette. We don't have to reprint the whole issue of the Ontario Gazette because there's a ‘t-e-h.’ Everyone will know what it means.” But if it's on e-Laws, it's there over time and it's simple to correct. It's not a complete print rerun, so they have an obligation to correct it. But where you draw the line between whether it is something chief legislative counsel can correct or whether it is something that the Legislature has to do, again, is a bit of a hard one. But if it's the description of a colour, that's not a typographical or processing error.

**The Vice-Chair:** Further debate?

**Mr. Kormos:** Yes, ma'am. I'm reminded of the title of that bill. Isn't it amazing that the Liberals consider it good government to be adding a thread to the description of a tartan?

**The Vice-Chair:** Further debate? Hearing none, shall government motion 96 carry? Carried.

Is there any debate on section 36, as amended? Shall section 36, schedule F, as amended, carry? Carried.

I call for government motion 97.

**Mr. Zimmer:** I move that the French version of subsection 37(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “modifications apportées” and substituting “modifications autorisées qui sont apportées.”

**The Chair:** Any debate? Seeing none, shall government motion 97 carry?

Government motion 98.

**Mr. Zimmer:** I move that subsection 37(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “and of the changes made under subsection 36(4)” and substituting “and of corrections made under subsection 36(4).”

**The Chair:** Any debate? Seeing none, shall government motion 98 carry? Carried.

Government motion 99.

**Mr. Zimmer:** I move that the French version of subsection 37(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “modifications apportées” and substituting “modifications autorisées qui sont apportées.”

**The Chair:** Any debate? Seeing none, shall government motion 99 carry? Carried.

Government motion 100.

**Mr. Zimmer:** I move that the French version of subsection 37(3) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “modification apportée” in the portion before clause (a) and substituting “modification autorisée qui est apportée.”

**The Chair:** Any debate? Seeing none, shall government motion 100 carry? Carried.

Government motion 101.

**Mr. Zimmer:** I move that the French version of subsection 37(4) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “modification” and substituting “modification autorisée.”

**The Chair:** Any debate? Seeing none, shall government motion 101 carry? Carried.

Any other debate on section 37? Seeing none, shall section 37, as amended, carry? It's carried.

Section 38: Any debate? Shall section 38 carry? Carried.

Government motion 102: We're at section 39.

**Mr. Zimmer:** I move that the French version of section 39 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “une modification est apportée” in the portion before clause (a) and substituting “une modification autorisée est apportée.”

**The Chair:** Any debate? Seeing none, shall government motion 102 carry? Carried.

Any other debate on section 39? Seeing none, shall section 39, as amended, carry? Carried.

Sections 40 to 45: There are no amendments. Any debate? Shall sections 40 to 45 carry? Carried.

Government motion 103: section 46.

**Mr. Zimmer:** I move that subsection 46(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“Authorized persons continue to act

“(2) A person authorized to act under the former act or regulation has authority to act under the corresponding provisions, if any, of the new or amended one until another person becomes authorized to do so.”

**The Chair:** Any debate? Seeing none, shall government amendment 103 carry? Carried.

Any debate on section 46? Shall section 46, as amended, carry? Carried.

We're now dealing with section—

**Mr. Kormos:** Section 47, please.

**The Chair:** Section 47?

**Mr. Kormos:** Just a question: What was the uncertainty? It seems logical, but what was the uncertainty that the new section 47 addresses?

1040

**Mr. Zimmer:** Mr. Gregory, can you help us?

**Mr. Gregory:** There was an uncertainty of what happened to sort of chain acts and regulations, and amendments to regulations. You'd think it would go without saying, but there are some overcautious people who are—I suppose both lawyers and civil servants are inclined to be cautious. When you duplicate the caution, you think, well, we're not sure about that amendment. One of the things that the Good Government Act did in the agriculture schedule was revoke a whole lot of regulations where the acts had previously been repealed and there wasn't any authority to get at them. So we're in here just trying to solve that kind of problem so we don't have to go back to the Legislature when something has been forgotten.

**Mr. Kormos:** That's precisely why, because I questioned the Clerk's table in that legislation. My query to the Clerk's table was, "How in order is legislation that revokes regulations that don't have their root any more?" I suppose you're addressing that ambiguity. God bless.

**Mr. Gregory:** That's exactly right. We're taking that decision off the table. If the act has gone, then either the regulations have gone or, if there are still some that seem to have some life in them, then there's authority to kill them by the cabinet that made them—

**Mr. Kormos:** Had it ever been an issue other than amongst the sometimes bizarre, arcane and irrelevant discussions that take place here?

**Mr. Gregory:** I'm not aware that there had been lawsuits that turned on this decision.

**Mr. Kormos:** Yes. Okay.

**Mr. Zimmer:**—you might not like the answer.

**Mr. Kormos:** And we got the answer.

**The Chair:** Any further debate on section 47?

**Mr. Kormos:** Chair, if I may, please—to have 48 and 49 dealt with.

**The Chair:** Any debate on sections 47 to 49?

Shall sections 47 to 49 carry? Carried.

Section 50: government motion 104.

**Mr. Zimmer:** I move that the French version of subsection 50(3) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "(Pouvoirs de modification)" and substituting "(Modifications autorisées)."

**The Chair:** Any debate? Seeing none, shall government amendment 104 carry? Carried.

Any further debate on section 50? Seeing none, shall section 50, as amended, carry? Carried.

Sections 51 and 52: Any debate? Seeing none, shall sections 51 and 52 carry? Carried.

Section 53: government motion 105.

**Mr. Zimmer:** I move that the French version of clause 53(1)(b) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"(b) soit telle qu'elle est modifiée comme l'autorise la partie V (Modifications autorisées)."

**The Chair:** Any debate? Seeing none, shall government motion 105 carry? Carried.

Government motion 106.

**Mr. Zimmer:** I thank the members opposite for their lack of comment on my—

**Mr. Kormos:** Excuse me, Chair. There are people here far more fluent in French taking far more delight in this than I am.

**The Chair:** Government motion 106.

**Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot):** I move that the French version of subsection 53(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out, "rééditée, prise de nouveau ou modifiée en vertu de" and substituting—

**The Chair:** Mr. McMeekin, the audio didn't get the first part. Can you start from the beginning? It's more practice.

**Mr. Kormos:** On a point of order, Mr. Chair: We know that it's imperative that the motion, notwithstanding that it's printed, be read into the record. Doesn't it have to be read accurately?

**The Chair:** As accurately as possible, I suppose.

**Mr. McMeekin:** Now you know why I was a grade 10 dropout.

I move that the French version of subsection 53(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "rééditée, prise de nouveau ou modifiée en vertu de" and substituting "rééditée ou prise de nouveau ou modifiée comme l'autorise".

So help me God.

**The Chair:** Any debate? Mr. Kormos.

**Mr. Kormos:** As a kid who from time to time was in a Catholic church, that sounded very much like Latin as compared to French. But I support the motion.

**The Chair:** Any further debate? Seeing none, shall amendment 106 carry? Carried.

Any further debate on section 53, as amended? Shall section 53, as amended, carry? Carried.

Sections 54 to 68: Any debate? Mr. Kormos?

**Mr. Kormos:** No, no. Please do 54 through 56, if you don't mind.

**The Chair:** Sections 54 through 56: Any debate? Seeing none, shall sections 54 to 56 carry? Carried.

**Mr. Kormos:** Section 57, please.

**The Chair:** Section 57. Mr. Kormos.

**Mr. Kormos:** I appreciate that you've borrowed this language. It's a fascinating concept; it really is. Help us with this: "The law is always speaking, and the present tense shall be applied to circumstances as they arise." I think it's just a delightful turn of phrase. Just in the interests of learning something in the course of doing this stuff, tell us about it.

**Mr. Gregory:** We had some interesting discussions among government lawyers on this one as well, as you can imagine.

There are two parts of it that overlap: "The law is always speaking," and "the present tense" applies. That "the present tense" applies is perhaps the easier to understand. If it says, "This is an offence, and if you do this three years from now it is still an offence," that's a bit, "The law is always speaking." You don't have to say, "And it will be an offence forever, until the Legislature amends this law." If you say, "This is this," it means, "Whenever you read it, this is." And really, that's a similar effect to, "The law is always speaking." The law says, "This is an offence." The law says, "'A' has the right to do 'B.' It will be true in five years; it will be true in 10 years. It will be true until the Legislature amends that law." So the law is always speaking to the circumstances.

It has been interpreted as well, however—and this is one of the reasons we used both expressions when we were preparing this legislation—to say "and the law means what these words mean now." This is one of the reasons, of course, that the Legislature has to go back from time to time and look at laws as words change meaning. So if you say, "No person shall drive a vehicle on a private road"—I make that up as an example—and that law is passed in 1980, what if somebody comes along with some kind of all-terrain vehicle or with a Segway, one of these two-wheel jobbies that they stand up on? Well, that didn't exist in 1980, so is that a vehicle within the meaning of that prohibition? The Legislature couldn't possibly have been thinking of those. On the other hand, it's a vehicle, and the law is always speaking and applies to vehicles as vehicles come along, as it were. So the law would cover that. If you want to exclude it by saying, "Oh, that's not what we meant by 'vehicle,'" then you're going to have to go back and change that.

That's a bit of a cumbersome explanation, but to say the law applies as the circumstances arise to which it may apply, without having to reinvent it and without having to say every time, "This continues in force. This will apply."

1050

**Mr. Kormos:** But is the concept "the law is always speaking" a principle that is merely being codified? It's an overriding principle of legislative interpretation.

**Mr. Gregory:** It's true, but there are a number of provisions in the Interpretation Act that are there because some court some day had some doubt about it. Some of them have been around for a very long time. We've dropped a couple of provisions, like "month" means "calendar month," because it's been 150 years since a court said it meant a lunar month, and we thought it was fairly safe. But there are times when you want to say that just to remove all doubt, so it was fairly economical and we thought we'd better do something—

**Ms. Leitman:** If I may add, "the law is always speaking" is, as you say, quite a fun turn of phrase. It predates legislation in Ontario by a considerable number of centuries, but it is also in the existing Interpretation Act. So it's not new to say—the existing Interpretation

Act, section 4, says, "The law shall be considered as always speaking...." We've modernized it a tiny bit.

**Mr. Kormos:** Gosh, you take a long-standing legal convention and principle with such historic qualities and then you modernize it and secularize it.

**Ms. Leitman:** A tiny bit. I would hardly call "the law is always speaking" secular.

**Mr. Kormos:** Yes, but I was being hypercritical.

**Ms. Leitman:** Good. Go ahead.

**Mr. Kormos:** Good. Thank you very much.

**The Chair:** Any other debate? Shall section—

**Mr. Kormos:** If I may, maybe we can deal with sections 57 through to 64, inclusive, if you wish.

**The Chair:** Any debate on sections 57 to 64? Shall sections 57 to 64 carry? Carried.

Section 65: Any debate?

**Mr. Kormos:** "No act ... binds Her Majesty ... unless it expressly states an intention to do so." Now we're not talking about the Queen herself, in body. She's not going to be driving down the 401 in her Ford Taurus doing 120 in a 100-kilometre-an-hour zone, so what's the impact of this?

**Mr. Gregory:** This is a provision that essentially says that statutes do not bind the crown—meaning the government, the executive—unless they say so. They very frequently do. This act "binds the crown" is a fairly standard expression. One also has to read this in conjunction with the section at the beginning of the interpretation part that says that this act applies unless there's a necessary implication to the contrary.

There are a number of places where in fact the crown is bound by necessary implication. Certainly, the books on it—Professor Hogg's book, now Hogg and Monahan, on crown liability—make it very clear there are a lot of other places where the crown is bound besides where it says specifically. Nevertheless, if a statute or regulation does not say "the crown is bound," and there is not some other circumstance to say it has to be bound or the thing makes no sense, then the crown is not bound. This is, I think, fairly standard. There are two provinces that have a different provision. Everybody else has this provision.

**Mr. Kormos:** I want to make sure—so the crown is not bound unless it explicitly states, but the application of the interpretative rules in terms of the objective intent of the statute may bind the crown?

**Mr. Gregory:** That's right. There are cases, for example, where the crown has entered into a contract, where statute allows for a contract and the crown enters into it and the crown is bound and the crown can't get out of it by saying, "Oh, the statute didn't talk about us."

**Mr. Zimmer:** Actually, in your example of the Queen driving down the highway in a high-speed Taurus—a number of years ago, I recollect, there was a case where Princess Anne was speeding in her Jaguar and the police wanted to charge her and this issue about whether she could be charged came up. How they worked their way around it was, Princess Anne voluntarily submitted to the charge and pleaded guilty and paid her fine.

**Mr. Kormos:** First we should abolish the Senate and then we can deal with these other matters in due course. I'm going to suggest that you deal with 66 at the same time. Again, this is just a very interesting section. I appreciate it's not new, but it cries out for some sort of explanation.

**Mr. Zimmer:** You're on section what?

**Mr. Kormos:** Section 66.

**The Chair:** Sections 65 and 66. Any further debate?

**Mr. Kormos:** No, no. I'm proposing we deal with 65 and 66 together and have one vote.

**The Chair:** That's fine. Any further debate on those two?

**Mr. Kormos:** Section 66 is just a question about—read 66; it's fascinating. Again, some of these things just so thoroughly underscore how relevant the monarchy is in terms of head of state and our political-governmental-legislative structure.

**Mr. Gregory:** This provision is a very old one. This provision goes back to the days when a lot of people, including a lot of public officials, held commissions from the crown, and when the crown died, that is, when the king died—or queen, possibly—then you wondered, “Well, now what? What happens?” The point of legislation, and the point of legislation probably since the previous Elizabethan time, was, things go on; in other words, the provision where the civil service keeps its jobs, perhaps, if you want to look at it constructively, but in any event, things go on. The new monarch doesn't have to spend his or her first weeks in office re-signing commissions and appointments and orders that were signed by the previous one. The succession of the monarch does not change the apparatus of the state by the very fact of its occurring. That's perhaps the easiest way of putting it.

**Mr. Zimmer:** Alvin Curling is particularly interested in this section.

**Mr. Kormos:** Well, no. In the case of Alvin Curling, Paul Martin didn't die; he just got defeated.

**Mr. Gregory:** The new people advising the monarch may, of course, advise the monarch to change the orders, but pending the change, the old orders continue in force.

**Mr. Kormos:** The question is, is this just a carry on of this section? Is it critical at this point in our legislative governmental history? If this section weren't here, does anybody anticipate any judicial body accepting an argument that would suggest to the contrary?

**Ms. Leitman:** I would anticipate that arguments would be made. I would hope that no judge would accept them. That said, if you look at the beginning of every bill that you look at, it always begins with “Her Majesty, by and with” da, da, da. And you're right; it's entrenched in our system of legislating and governing. Do we need these arguments? No. It's there to make it clear.

**Mr. Gregory:** It's probably a constitutional convention by now, but since we have the section already, it doesn't seem to be—

**Ms. Leitman:** To remove it might raise eyebrows and encourage arguments.

**The Chair:** Any further debate?

**Mr. Kormos:** Why would we want to discourage arguments and debates about trivial matters? I hear you. It's fascinating. Thank you.

**The Chair:** Shall sections 65 and 66 carry? Carried.

Section 67: Any debate?

**Mr. Kormos:** Section 68 as well, please.

**The Chair:** Shall sections 67 and 68 carry? Carried.

Section 69: government motion 107.

**Mr. Zimmer:** I move that section 69 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following subsection:

“Same

“(2) A proclamation that specifies different commencement dates for different provisions may be amended or revoked with respect to a particular provision before the commencement date specified for that provision, but not on or after that date.”

1100

**The Chair:** Any debate? Seeing none, shall amendment 107 carry? Carried.

Any further debate on section 69? Shall 69, as amended, carry? Carried.

Section 70: amendment number 108.

**Mr. Zimmer:** I move that section 70 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“Appointments

“70. (1) A provision authorizing the Lieutenant Governor in Council, the Lieutenant Governor or a minister of the crown to appoint a person to an office authorizes an appointment for a fixed term or an appointment during pleasure, and if the appointment is during pleasure, it may be revoked at any time, without cause and without giving notice.

“Remuneration and expenses

“(2) A provision described in subsection (1) authorizes the Lieutenant Governor in Council to determine the remuneration and expenses of the person who is appointed.”

**The Chair:** Any debate?

**Mr. Kormos:** This seems to add subsection (2) to what's already in the bill. Am I to take it that it merely suggests that a provision providing for appointment also gives the power to determine, basically, salary?

**Mr. Zimmer:** Mr. Gregory?

**Mr. Gregory:** The intention is that the provision authorizing the appointment authorizes fixing of a remuneration. This provision would not give any particular ministry the right to spend any money it didn't already have. It would still have to go to the House for its appropriations in the usual way to get the money. If there was a provision saying, “The Lieutenant Governor may appoint members of an agency,” for example, then without a provision in the statute going on to say, “and they may be paid,” they may be paid. It doesn't require that they be

paid either, of course—they may well be appointed as volunteers—but it would give the statutory power to pay them.

At present, there are a large number of statutes creating agencies that go on to say, “and they may be paid,” and there are a number of others that are simply silent, and in many of those cases, they may be being paid. So it ends in uncertainty as to whether there is a power to pay. So I say it doesn’t get you the money, because that’s done through public accounts and appropriations, but it gives you the statutory power to pay if that’s the nature of the appointment.

**Mr. Kormos:** Of course, Chair, this truly is the Alvin Curling section, as compared to the reference to Her Majesty the Queen.

**The Chair:** Any further debate on government motion number 108? Seeing none, shall that carry? Carried.

Any further debate on section 70? Shall section 70, as amended, carry? Carried.

There are no amendments between sections 71 and 91.

**Mr. Kormos:** Do section 75, please.

**The Chair:** Sections 71 to 75: Any debate? Seeing none, shall sections 71 to 75 carry? Carried.

Section 76: Any debate?

**Mr. Kormos:** I should indicate, 76 to 78, please.

**The Chair:** Sections 76 to 78: Any debate? Seeing none, shall sections 76 to 78 carry? Carried.

Section 79: Mr. Kormos.

**Mr. Kormos:** One moment, please.

Sections 79 through 91, inclusive, if it’s the wish of my colleagues.

**The Chair:** Sections 79 to 91: Any debate? Seeing none, shall sections 79 to 91 carry? Carried.

Government motion 109.

**Mr. Zimmer:** I move that subsection 92(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “have effect” and substituting “be unconsolidated and unrepealed.”

**The Chair:** Any debate? Seeing none, shall government motion 109 carry? Carried.

Government motion 110.

**Mr. Zimmer:** I move that subsection 92(2) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out “have effect” and substituting “be unconsolidated and unrepealed.”

**The Chair:** Any debate? Seeing none, shall government amendment 110 carry? That’s carried.

Government amendment 111.

**Mr. Zimmer:** I move that the table to section 92 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“Table of Unconsolidated and Unrepealed Acts / Table des lois non abrogées et non codifiées.”

There are nine pages.

**Mr. Kormos:** On a point of order, Chair: I, for the life of me, don’t know how you read the schedule onto the record. Then, having said that, I don’t know how you comply with the rule that requires a motion—and this is

part of a motion—to be presented without reading it onto the record. I, for one, without creating a precedent, would love to give unanimous consent, but of course if it can’t be done, you can’t give unanimous consent. Otherwise, Mr. Zimmer—we know what the rule is—is going to have to read every single bit of this fine print in both official languages, and that’s a lot of reading.

**Mr. Zimmer:** I second your motion for unanimous consent.

**Mr. Kormos:** No, not a motion. We’ve got to live with the rules. Let’s find out what the rules are. I’d love for us to be able to give unanimous consent to this one, one time only, because there may be times when I’ll sit here with pleasure insisting that you read every one of these. I mean, it just doesn’t make sense; you can’t read out a schedule with columns and formats.

**The Chair:** Considering that it’s a lengthy table and it’s not a motion and obviously it will be lengthy—

**Mr. Zimmer:** While the clerk is reflecting on this, could we have a two- or three-minute adjournment?

**The Chair:** We’ll take a three-minute recess.

*The committee recessed from 1109 to 1118.*

**The Chair:** The committee is called back to order.

I’ve been advised that all motions have to be read into the record.

**Mr. McMeekin:** Including tables, Mr. Chair? We’ve never—

**Mr. Kormos:** Don’t challenge the Chair.

**Mr. McMeekin:** I’m not challenging the Chair. I just have a question, which I know is—

**Mr. Kormos:** On a point of order, Mr. Chair: Although somewhat anticipatory and not quite in order, it’s my understanding that moving a motion is not a collaborative or team effort, that the person who begins moving a motion has to move the motion in its entirety.

**The Chair:** That is correct. Each motion is one mover.

**Mr. Kormos:** Let’s go. Time is fleeting.

**The Chair:** Mr. Zimmer.

**Mr. Zimmer:** Well, I am going to ask my colleagues to share reading the table.

**Mr. Kormos:** On a point of order, Mr. Chair: He’s not going to ask his colleagues to share, because moving a motion is not a team or collaborative effort. It’s a solo flight.

**The Chair:** The motion will be moved by one member.

**Mr. Zimmer:** You dog. I want that on the record.

I move unanimous consent that I can share the reading of the table.

**The Chair:** That’s not within the purview of unanimous consent. That can’t be done.

**Mr. Zimmer:** Okay. Well, I may be dumb and I may be a lot of other things, but I’ve got a memory.

I move that the table to section 92 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

TABLE OF UNCONSOLIDATED AND UNREPEALED ACTS/  
TABLE DES LOIS NON ABROGÉES ET NON CODIFIÉES

COLUMN/COLONNE 1	COLUMN/COLONNE 2	COLUMN/COLONNE 3	COLUMN/COLONNE 4
NAME OF ACT <i>TITRE DE LA LOI</i>	CITATION	PART REMAINING UNCONSOLIDATED AND UNREPEALED  <i>PARTIE TOUJOURS NON ABROGÉE ET NON CODIFIÉE</i>	AMENDMENTS  <i>MODIFICATIONS</i>
Academy of Medicine, Toronto Act, 1946	1946, c. 1	Total/ <i>La totalité</i>	
An Act concerning Monopolies, and Dispensation with penal laws, etc.	R.S.O. 1897, c. 323	See/ <i>voir</i> R.S.O. 1980, Appendix A	
An Act for the settlement of questions between the Governments of Canada and Ontario respecting Indian Lands	1891, c. 3	Total/ <i>La totalité</i>	
An Act relating to the Avenues and Approaches to Queen's Park, Toronto	1913, c. 75	Total/ <i>La totalité</i>	
An Act relating to the Municipality of Shuniah, and the tax imposed on lands in the District of Algoma	1875-76, c. 37	s. 1, 4, 6-9, 11-14 (in so far as not inconsistent with 1936, c. 83; <i>sauf incompatibilité avec 1936, chap. 83</i> )	
An Act respecting a certain Agreement between the University of Toronto and the City of Toronto	1907, c. 54	Total/ <i>La totalité</i>	
An Act respecting Certain Rights and Liberties of the People	R.S.O. 1897, c. 322	See/ <i>voir</i> R.S.O. 1980, Appendix A	
An Act respecting Champerty	R.S.O. 1897, c. 327	See/ <i>voir</i> R.S.O. 1980, Appendix A	
An Act respecting Law Fees and Trust Funds	1869, c. 9	s. 3	
An Act respecting Municipalities in Algoma, Muskoka, Parry Sound, Nipissing and Thunder Bay	1885, c. 41	s. 3	

An Act respecting Real Property	R.S.O. 1897, c. 330	See/ <i>voir</i> R.S.O. 1980, Appendix A	
An Act respecting Rectories	R.S.O. 1897, c. 306	s. 2-4	
An Act respecting the Boundary between the Provinces of Ontario and Manitoba	1899, c. 2	See/ <i>voir</i> R.S.O. 1980, Appendix A	
An Act respecting the District of Rainy River	1885, c. 20	s. 12	
An Act respecting the Imperial Statutes relating to property and civil rights incorporated into the Statute Law of Ontario	1902, c. 13	Total/ <i>La totalité</i>	
An Act respecting the Municipality of Shuniah	1877, c. 31	s. 1-8 (in so far as not inconsistent with 1936, c. 83; <i>sauf incompatibilité avec 1936, chap. 83</i> )	
An Act respecting The Ontario and Minnesota Power Company	1911, c. 7	Total/ <i>La totalité</i>	
An Act respecting the Operation of Statutes of Ontario	1874, c. 4	s. 2	
An Act respecting the settlement by arbitration, of accounts between the Dominion of Canada and the Provinces of Ontario and Quebec, and between the said two provinces	1891, c. 2	Total/ <i>La totalité</i>	
An Act respecting the site of the new Legislative and Departmental Buildings	1894, c. 12	Total/ <i>La totalité</i>	
An Act respecting Tithes	R.S.O. 1897, c. 305	Total/ <i>La totalité</i>	
An Act to amend the Act respecting the settlement by Arbitration of Accounts between the Dominion of Canada and the Provinces of Ontario and Quebec and between the said two Provinces	1901, c. 5	Total/ <i>La totalité</i>	

An Act to apply the Municipal Law to certain Townships in the District of Nipissing	1877, c. 30	Total/ <i>La totalité</i>	
An Act to confirm the title of the Government of Canada to certain lands and Indian Lands	1915, c. 12	Total/ <i>La totalité</i>	
An Act to create The Provisional Judicial District of Fort Frances	1908, c. 36	s. 2, 16-25	1909, c. 26, s. 11
An Act to create the Provisional Judicial District of Sudbury	1907, c. 25	s. 2, 10, 22-24	1909, c. 26, s. 10
An Act to express the Consent of the Legislative Assembly of the Province of Ontario to an Extension of the Limits of the Province	1912, c. 3	Total/ <i>La totalité</i>	
An Act to incorporate the Town of Kapuskasing	1921, c. 36	Total/ <i>La totalité</i>	
An Act to incorporate the University Residence Trustees	1905, c. 35	Total/ <i>La totalité</i>	
An Act to make provision for payment of Law Fees in territorial and judicial districts by means of stamps and to amend the Act respecting Law Fees and Trust Funds	1871-72, c. 20	s. 3	
An Act to organize the Municipality of Shuniah and to amend the Acts for establishing Municipal Institutions in unorganized districts	1873, c. 50	s. 1-3 (in so far as not inconsistent with 1936, c. 83; <i>sauf incompatibilité avec 1936, chap. 83</i> )	
An Act to provide for Development of Water Power at Dog Lake	1908, c. 24	Total/ <i>La totalité</i>	
An Act validating a certain agreement between the University of Toronto and the Corporation of the City of Toronto	1889, c. 53	Total/ <i>La totalité</i>	
Anglican Church of Canada Act, 1979	1979, c. 46	Total/ <i>La totalité</i>	

Apprenticeship and Tradesmen's Qualification Act	R.S.O. 1970, c. 24	s. 19 (1)	
Architects Act	R.S.O. 1960, c. 20	s. 4, 6	
Architects Act, 1984	1984, c. 12	s. 27 (4)	
Assessment Amendment Act, 1954	1954, c. 3	s. 13	
Boards of Trade General Arbitration Act	R.S.O. 1914, c. 66	Total/ <i>La totalité</i>	
Cemeteries Act, 1989	1989, c. 50	s. 88	
Central Trust Company Act, 1983	1983, c. 64	Total/ <i>La totalité</i>	
Chartered Accountants Act, 1956	1956, c. 7	Total/ <i>La totalité</i>	1998, c./chap. 2, s./art. 10; 2000, c./chap. 26, Sch./Ann. A, s./art. 3; 2000, c./chap. 42, Sch./Ann., s./art. 7-11
Chartered Shorthand Reporters Act	R.S.O. 1937, c. 234	Total/ <i>La totalité</i>	
City of Hamilton Act, 1970	1970, c. 78	Total/ <i>La totalité</i>	
City of Kingston Act, 1970	1970, c. 76	Total/ <i>La totalité</i>	
Conveyancing and Law of Property Amendment Act, 1956	1956, c. 10	s. 3	
County of Middlesex Act, 1979	1979, c. 1	Total/ <i>La totalité</i>	
Crown Administration of Estates Act	R.S.O. 1970, c. 99	s. 5 (2)	
Crown Trust Company Act, 1983	1983, c. 7	Total/ <i>La totalité</i>	
Debentures Guarantee Act, 1919	1919, c. 4	Total/ <i>La totalité</i>	
Don Valley Improvement Act, 1933	1933, c. 12	Total/ <i>La totalité</i>	
Education Amendment Act, 1986 (No. 1)	1986, c. 21	s. 4	
English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act, 1986	1986, c. 23	Total/ <i>La totalité</i>	

Environmental Protection Act, 1971	1971, c. 86	s. 27 (2, 3, 5)	
Essex County French-language Secondary School Act, 1977	1977, c. 5	Total/ <i>La totalité</i>	1986, c. 21, s. 4
Family Law Reform Act, 1978	1978, c. 2	s. 70 (4, 5)	
Federal District Commission Act	R.S.O. 1950, c. 133	Total/ <i>La totalité</i>	
Greater Winnipeg Water District Act (Ontario), 1916	1916, c. 17	Total/ <i>La totalité</i>	
Health Department Amendment Act, 1925	1925, c. 68	s. 2	
Income Tax Agreement Act, 1962-63	1962-63, c. 62	Total/ <i>La totalité</i>	
Income Tax Amendment Act, 1962-63	1962-63, c. 61	s. 8, 9	
Indian Lands Act, 1924	1924, c. 15	Total/ <i>La totalité</i>	
Jack Miner Migratory Bird Foundation Act, 1936	1936, c. 36	Total/ <i>La totalité</i>	
Jurors Act	R.S.O. 1937, c. 108	s. 90	
Lakehead University Act, 1965	1965, c. 54	Total/ <i>La totalité</i>	
Lake of the Woods Control Board Act, 1922	1922, c. 21	Total/ <i>La totalité</i>	1958, c. 48
Lake Superior Board of Education Act, 1976	1976, c. 59	Total/ <i>La totalité</i>	
Land Titles Amendment Act, 1954	1954, c. 43	s. 2	
Lieutenant-Governor's Act	R.S.O. 1914, c. 12	s. 4	
Manitoulin, Barrie and Cockburn Islands Land Act, 1990	1990, c. 27	Total/ <i>La totalité</i>	
Marriage Act, 1950	1950, c. 42	s. 51	
Married Women's Property Act	R.S.O. 1914, c. 149	s. 4 (4, 5), 6, 8, 11-15	
Master and Fellows of Massey College Act, 1960-61	1960-61, c. 53	Total/ <i>La totalité</i>	1974, c. 13

Mortmain and Charitable Uses Repeal Act, 1982	1982, c. 12	Total/ <i>La totalité</i>	
Mortgages Act	R.S.O. 1914, c. 112	s. 15	
Mortgages Amendment Act, 1964	1964, c. 64	s. 8	
Municipal Amendment Act, 1944	1944, c. 39	s. 37 (1)	
Municipality of Metropolitan Toronto Amendment Act (No. 2), 1977	1977, c. 68	s. 2	
Niagara Development Act, 1951	1951, c. 55	Total/ <i>La totalité</i>	
Niagara Development Agreement Act, 1951	1951, c. 56	Total/ <i>La totalité</i>	
North Georgian Bay Recreational Reserve Act, 1962-63	1962-63, c. 68	Total/ <i>La totalité</i>	
The North Pickering Development Corporation Act, 1974	1974, c. 124	Total/ <i>La totalité</i>	1989, c. 71, s. 4
Ontario-Manitoba Boundary Line Act, 1953	1953, c. 76	Total/ <i>La totalité</i>	1955, c. 56
Ontario Niagara Development Act	1916, c. 20	Total/ <i>La totalité</i>	
Ontario Niagara Development Act, 1917	1917, c. 21	Total/ <i>La totalité</i>	
Ontario School Trustees' Council Act	R.S.O. 1980, c. 355	Total/ <i>La totalité</i>	
Ontario Transportation Development Corporation Act	R.S.O. 1980, c. 358	Total/ <i>La totalité</i>	
Osgoode Hall Law School Scholarships Act, 1968-69	1968-69, c. 90	Total/ <i>La totalité</i>	1972, c. 70; 1973, c. 140
Ottawa River Water Powers Act, 1943	1943, c. 21	Total/ <i>La totalité</i>	
Petroleum Products Price Freeze Act, 1975	1975, c. 66	Total/ <i>La totalité</i>	
Planning Amendment Act, 1960	1960, c. 83	s. 5	
Planning Amendment Act, 1971	1971, c. 2	s. 3 (2)	

Planning Amendment Act, 1979	1979, c. 59	s. 2, 3	
Power Commission Amendment Act, 1949	1949, c. 73	the part of subsection 4 (1) relating to subsection 17 (8)/ <i>la partie du paragraphe 4 (1) relative au paragraphe 17 (8), s. 6 (2)</i>	
Power Commission Amendment Act, 1973	1973, c. 57	the part of section 4 relating to subsection 2 (2)/ <i>la partie de l'article 4 relative au paragraphe 2 (2)</i>	
Powers of Attorney Act, 1979	1979, c. 107	s. 11 (2)	
Proceedings Against the Crown Act	R.S.O. 1970, c. 365	s. 28, 29	
Professional Engineers Act, 1984	1984, c. 13	s. 22	
Public Lands Amendment Act, 1956	1956, c. 72	s. 9, 10	
Public Lands Amendment Act, 1960	1960, c. 94	s. 5	
Public Service Pension Act, 1989	1989, c. 73	Sch. 1, 2	
Public Works Creditors Payment Repeal Act, 1975	1975, c. 45	s. 2 (2)	
Railways Act	R.S.O. 1950, c. 331	Total/ <i>La totalité</i>	1968, c. 113; 1979, c. 44; 1986, c. 64, s. 61; 2002, c./chap. 24, Sch./Ann. B, s./art. 25
Registry Act	R.S.O. 1897, c. 136	s. 117	
Registry Act	R.S.O. 1960, c. 348	s. 3 (2)	
Registry Amendment Act, 1954	1954, c. 83	s. 11	
Regulations Revision Act, 1989/ <i>Loi de 1989 sur la refonte des règlements</i>	1989, c./chap. 82	Total/ <i>La totalité</i>	
Religious Institutions Act	R.S.O. 1914, c. 286	s. 3-6	
Religious Institutions Amendment Act, 1957	1957, c. 108	s. 2	

Religious Organizations' Lands Act, 1979	1979, c. 45	s. 29	
Residential Tenancies Act	R.S.O. 1980, c. 452	s. 1-59, 62-69, 74, 111-113, 116, 119, 135 (1), 135 (3), 136, Sch.	
Royal Conservatory of Music of Toronto Act, 1954	1954, c. 85	Total/ <i>La totalité</i>	
Ryerson University Act, 1977 (formerly Ryerson Polytechnical Institute Act, 1977)	1977, c. 47	Total/ <i>La totalité</i>	1989, c. 13; 1993, c./chap. 1, s./art. 1-20; 2002, c./chap. 8, Sch./Ann. P, s./art. 5
Sandwich, Windsor and Amherstburg Railway Act, 1930	1930, c. 17	Total/ <i>La totalité</i>	1932, c. 56; 1933, c. 59, s. 32 (2); 1939, c. 43, s. 1-7; 1968, c. 120; 1970, c. 68, s. 1, 2, 5-7
Sandwich, Windsor and Amherstburg Railway Act, 1939	1939, c. 43	s. 8, 9	1957, c. 109
Sandwich, Windsor and Amherstburg Railway Act, 1949	1949, c. 91	Total/ <i>La totalité</i>	1960, c. 105
Sandwich, Windsor and Amherstburg Railway Act, 1970	1970, c. 68	s. 3, 4, 8-11	
Sandwich, Windsor and Amherstburg Railway Act, 1977	1977, c. 57	Total/ <i>La totalité</i>	
Sault Ste. Marie Bridge Act, 1960	1960, c. 106	Total/ <i>La totalité</i>	
Seine River Diversion Act, 1952	1952, c. 98	Total/ <i>La totalité</i>	
Sheriffs Amendment Act, 1941	1941, c. 54	s. 2	
Short Forms of Conveyances Act	R.S.O. 1980, c. 472	Total/ <i>La totalité</i>	1984, c. 32, s. 23
Short Forms of Mortgages Act	R.S.O. 1980, c. 474	s. 1-5, Sch. A, B	1984, c. 32, s. 24
Small Business Development Corporations Amendment Act, 1980	1980, c. 21	s. 12 (2)	
Soldiers' Aid Commission Act	R.S.O. 1960, c. 377	Total/ <i>La totalité</i>	1970, c. 83

Statute Law Amendment Act, 1903	1903, c. 7	s. 63	
Statute Law Amendment Act, 1906	1906, c. 19	s. 34, 43	
Statute Law Amendment Act, 1909	1909, c. 26	s. 19	
Statute Law Amendment Act, 1917	1917, c. 27	s. 71	
Statute Law Amendment Act, 1918	1918, c. 20	s. 59	
Statute Law Amendment Act, 1928	1928, c. 21	s. 25	
Statute Law Amendment Act, 1939	1939, c. 47	s. 36	
Statute Law Amendment Act, 1941	1941, c. 55	s. 44	
Statute of Uses	R.S.O. 1897, c. 331	See/voir R.S.O. 1980, Appendix A	
Statutes Revision Act, 1989/ <i>Loi de 1989 sur la refonte des lois</i>	1989, c./chap. 81	Total/ <i>La totalité</i>	
Steep Rock Iron Ore Development Act, 1949	1949, c. 97	Total/ <i>La totalité</i>	
St. Lawrence Development Act, 1952 (No. 2)	1952, c. 3	Total/ <i>La totalité</i>	
Succession Duty Act Supplementary Provisions Act, 1980	1980, c. 28	Total/ <i>La totalité</i>	
Succession Duty Amendment Act, 1961-62	1961-62, c. 133	s. 5	
Succession Duty Repeal Act, 1979	1979, c. 20	s. 1	
Succession Law Reform Act, 1977	1977, c. 40	s. 43 (2), 52, 62 (2), 87 (2), 89 (3)	
Teachers' Pension Act, 1989	1989, c. 92	Sch. 1, 2	
Toronto District Heating Corporation Act, 1980	1980, c. 73	Total/ <i>La totalité</i>	1998, c./chap. 15, Sch./Ann. C, s./art. 14
Toronto Power and Railway Purchase Act, 1921	1921, c. 23	Total/ <i>La totalité</i>	

Toronto Radial Railway Act, 1921	1921, c. 24	Total/ <i>La totalité</i>	
Township of Marathon Land Act, 1984	1984, c. 53	Total/ <i>La totalité</i>	
Unemployment Insurance Act, 1939	1939, c. 52	Total/ <i>La totalité</i>	
University Act, 1922	1922, c. 101	Total/ <i>La totalité</i>	
University Avenue Extension Act, 1928	1928, c. 17	Total/ <i>La totalité</i>	1929, c. 23, s. 19; 1948, c. 95
University of Guelph Act, 1964	1964, c. 120	Total/ <i>La totalité</i>	1965, c. 136; 1971, c. 56, s. 21
University of Ottawa Act, 1965	1965, c. 137	Total/ <i>La totalité</i>	
University of Toronto Act, 1971	1971, c. 56	Total/ <i>La totalité</i>	1978, c. 88
Upper Canada College Act	R.S.O. 1937, c. 373	Total/ <i>La totalité</i>	1958, c. 120
Urban Transportation Development Corporation Ltd. Act	R.S.O. 1980, c. 518	Total/ <i>La totalité</i>	
Wilfrid Laurier University Act, 1973	1973, c. 87	Total/ <i>La totalité</i>	
York University Act, 1965	1965, c. 143	Total/ <i>La totalité</i>	

**The Chair:** Thank you, Mr. Zimmer.

Any further debate? Mr. Kormos.

**Mr. Kormos:** For instance, in the bill, numerous versions of the Ontario Loan Act were included, but they appear to have been excluded from the amendment. Is there a fast, down-and-dirty, if I may—

**Mr. Gregory:** The fact is that in the interim, the Ministry of Finance did an analysis of them and decided they didn't need to keep them. The ones that are in the schedule are the ones that are kept. Anything not in the schedule of the over 1,000 unconsolidated and unrepealed are repealed. Essentially, the Ministry of Finance went through its schedules—it didn't get through them because there was a lot of technical analysis before the bill was printed for first reading—between now and then, and we were able to repeal a whole lot more because they were comfortable that we didn't need all those Ontario Loan Acts.

**Mr. Kormos:** Because that was a very long table.

**Mr. Gregory:** It was a very long table, but it was longer before.

**Mr. Kormos:** There's another one coming up under section 93, but I don't think there are any amendments to that one.

**The Chair:** Any further debate? Shall government amendment 111 carry? Carried.

Any further debate on section 92? Shall section 92, as amended, carry? Carried.

Section 93: Any debate? Seeing none, shall section—

**Mr. Kormos:** One moment. There's a very lengthy table. I don't purport to move any amendments to it, or intend to, or even attempt to.

**The Chair:** Any further debate on section 93? Seeing none, shall section 93 carry? Carried.

Government amendment 112.

**Mr. McMeekin:** I would move, seconded by Mr. Zimmer, that section 94 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following subsection:

"Same

"(2) For greater certainty, a regulation under subsection (1) may address any uncertainty or transitional matter that arises before the day the regulation is filed."

**The Chair:** Any debate? Seeing none, shall amendment 112 carry? Carried.

**Mr. McMeekin:** Moved by myself, seconded by Mr. Zimmer, that section—

**The Chair:** Mr. McMeekin, any further debate on section 94? Shall section 94, as amended, carry? That's carried.

Sections 95 to 102: Any debate? Seeing none, shall 95 to 102 carry? Carried.

Government amendment 113: Will government amendment 113 be moved?

**Mr. Zimmer:** Just hold on a second here. Chair, I'll withdraw government motion 113.1.

**Interjection:** We're on motion 113.

**Mr. Zimmer:** I'm withdrawing motion 113.

**The Chair:** Thank you, Mr. Zimmer. Page 113.1 is not a motion.

Is there any debate on section 103? Shall section 103 carry? That's lost.

Sections 104 and 105: Any debate? Shall sections 104 and 105 carry? Carried.

Government motion 114.

**Mr. Zimmer:** I move that section 9 of the Executive Council Act, as set out in subsection 106(3) of schedule F to the bill, be struck out and the following substituted:

"Effect of orders in council

"9. (1) Where a provision of an act or regulation is affected by an order in council made under this act, the provision shall be read in a manner that accords with the order in council.

"Regulations

"(2) The Lieutenant Governor in Council may, without making other substantive changes, make a regulation amending a reference to a minister or ministry in an act or regulation to align the act or regulation with an order in council made under this act."

**The Chair:** Any debate on motion 114? Seeing none, shall government amendment 114 carry? Carried.

Any further debate on—

**Mr. Kormos:** On a point of order, Mr. Chair: I seek unanimous consent for a two-minute recess, please.

**The Chair:** All agreed?

**Mr. Zimmer:** No.

**The Chair:** No?

**Mr. Kormos:** You don't want to have a two-minute discussion when it's 12 o'clock? Jesus.

**The Chair:** It's 12 o'clock. This committee is adjourned.

*The committee adjourned at 1201.*



## CONTENTS

Wednesday 27 September 2006

<b>Access to Justice Act, 2006, Bill 14, <i>Mr. Bryant</i> / <b>Loi de 2006 sur l'accès à la justice, projet de loi 14, <i>M. Bryant</i></b> .....</b>	JP-849
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JP-30

JP-30

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Second Session, 38<sup>th</sup> Parliament

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**Thursday 28 September 2006**

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**Jeudi 28 septembre 2006**

**Standing committee on  
justice policy**

**Access to Justice Act, 2006**

**Comité permanent  
de la justice**

**Loi de 2006 sur l'accès à la justice**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 28 September 2006

Jeudi 28 septembre 2006

*The committee met at 1000 in room 228.*ACCESS TO JUSTICE ACT, 2006  
LOI DE 2006  
SUR L'ACCÈS À LA JUSTICE

Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

**The Vice-Chair (Mrs. Maria Van Bommel):** Good morning, everyone. I call the standing committee on justice policy to order. We are in clause-by-clause of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act of 2005.

I believe we had passed government motion 114 and we are now looking at section 106, as amended. Is there any discussion?

**Mr. Peter Kormos (Niagara Centre):** Recorded vote, please.

Ayes

Balkissoon, Kormos, Zimmer.

**The Vice-Chair:** Thank you very much. That carries.

**The Chair (Mr. Vic Dhillon):** Good morning, folks. We're at sections 107 to 119. Is there any debate? Seeing none, shall sections 107 to 119 carry?

**Mr. Kormos:** Recorded vote.

Ayes

Balkissoon, McMeekin, Van Bommel, Zimmer.

**The Chair:** That's carried.

We're at section 120, government motion 115.

**Mr. David Zimmer (Willowdale):** I move that section 120 of schedule F to the bill be struck out and the following substituted:

"Public Accounting Act, 2004

"120. Subsection 19(7) of the Public Accounting Act, 2004 is deemed to have been repealed on November 1, 2005."

**The Chair:** Any debate? Seeing none, shall government amendment 115 carry? Carried.

Any debate on section 120? Seeing none, shall section 120, as amended, carry? Carried.

Sections 121 and 122: Any debate? Seeing none, shall sections 121 and 122 carry? Carried.

Section 123, government amendment 116.

**Mr. Zimmer:** I move that subsection 123(4) of schedule F to the bill be struck out and the following substituted:

"(4) Subsection 24(5) of the act is amended by striking out 'within the meaning of the Regulations Act' at the end and substituting 'as defined in part III (Regulations) of the Legislation Act, 2005 or in a predecessor of that part.'"

**The Chair:** Any debate? Seeing none, shall government amendment 116 carry?

Any debate on section 123? Shall section 123, as amended, carry? Carried.

Sections 124 and 125. Any debate? Seeing none, shall section sections 124 and 125 carry? Carried.

Section 126, government amendment 116.1: Any debate? Seeing none, shall section 126 carry? It's defeated.

Sections 127 to 131. Any debate? Seeing none, shall sections 127 to 131 carry? Carried.

Table 1, part VIII, government motion 116.2: Mr. Zimmer.

**Mr. Zimmer:** I move that table 1 to part VIII of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out the following in the column titled "Provision/Disposition" opposite "Education Act/Loi sur l'éducation" in the column titled "Act/Loi":

Education Act/Loi sur l'éducation	10.1(12)
	10.1(13)
	. . . . .
	170.2.1(16)

**The Chair:** Shall the government motion carry? Carried.

Any debate on table 1 to part VIII? Seeing none, shall table 1 to part VIII, as amended, carry? Carried.

Section 132: Any debate? Shall section 132 carry? Carried.

New section, 132.1: government motion 116.3.

**Mr. Zimmer:** I move that part VIII of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following section:

“Bill 107—Human Rights Code Amendment Act, 2006

“132.1(1) This section applies only if Bill 107 (Human Rights Code Amendment Act, 2006, introduced on April 26, 2006) receives royal assent.

“(2) References in this section to provisions of Bill 107 are references to those provisions as they were numbered in the first reading version of the bill.

“(3) If section 6 of Bill 107 comes into force on or before the day subsection 132(1) of this schedule comes into force, the amendment to subsection 35(5) of the Human Rights Code made by subsection 132(1) of this schedule does not apply.”

**1010**

**The Chair:** Any debate? Seeing none, shall the amendment carry? Carried.

Shall section 132.1, as amended, carry? Carried.

Sections 133 to 137: Any debate? Seeing none, shall sections 133 to 137 carry? Carried.

Section 138: Government amendment 117.

**Mr. Zimmer:** I move that section 138 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“Commencement

“138(1) Subject to subsections (2) and (3), the act set out in this schedule comes into force on,

“(a) the first anniversary of the day the Access to Justice Act, 2005 receives royal assent; or

“(b) an earlier day to be named by proclamation of the Lieutenant Governor.

“Same

“(2) Sections 106 and 120, this section and section 139 come into force on the day the Access to Justice Act, 2005 receives royal assent.

“Same

“(3) The provision in each line of column 1 of the table to this subsection comes into force on the later of the following days:

“1. The day section 130 comes into force.

“2. The day the provision described in the corresponding line of column 2 of the table to this subsection comes into force.

“TABLE/TABLEAU

Column 1/Colonne 1	Column 2/Colonne 2
subsection 101(2)/paragraphe 101(2)	subsection 287.6(3) of the Education Act/paragraphe 287.6(3) de la Loi sur l'éducation
section 107/article 107	subsection 108(2) of the Funeral, Burial and Cremation Services Act, 2002/paragraphe 108(2) de la Loi de 2002 sur les services

	funéraires et les services d'enterrement et de crémation
subsection 109(1)/paragraphe 109(1)	subsection 10(6) of the Highway 407 East Completion Act, 2001/paragraphe 10(6) de la Loi de 2001 sur le tronçon final est de l'autoroute 407
subsection 109(2)/paragraphe 109(2)	subsection 29(8) of the Highway 407 East Completion Act, 2001/paragraphe 29(8) de la Loi de 2001 sur le tronçon final est de l'autoroute 407
section 114/article 114	subsection 38(3) of the Motor Vehicle Dealers Act, 2002/paragraphe 38(3) de la Loi de 2002 sur le commerce des véhicules automobiles
section 124/article 124	subsection 46(3) of the Real Estate and Business Brokers Act, 2002/paragraphe 46(3) de la Loi de 2002 sur le courtage commercial et immobilier
subsection 128(1)/paragraphe 128(1)	subsection 15(7) of the Safe Drinking Water Act, 2002/paragraphe 15(7) de la Loi de 2002 sur la salubrité de l'eau potable
subsection 128(2)/paragraphe 128(2)	subsection 21(9) of the Safe Drinking Water Act, 2002/paragraphe 21(9) de la Loi de 2002 sur la salubrité de l'eau potable

**The Chair:** Any debate? Shall section 117 carry? Carried.

Any debate on section 138? Shall section 138, as amended, carry? Carried.

Any debate on section 139? Shall section 139 carry? Carried.

Any debate on schedule F, as amended? Shall schedule F, as amended, carry? Carried.

Shall the title of the bill carry—oh, is there any debate on the title of the bill?

**Mr. Kormos:** Yes, there is, Chair. I was shocked upon reading this morning's Toronto Star.

**Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot):** Can't hear you, Peter; sorry.

**Mr. Kormos:** My apologies, sir.

I was shocked, upon reading this morning's Toronto Star, to see the comment made by one Greg Crone, wherein, dumb as a bag of hammers—honest. After all we've been through and in view of the fact that the government has allowed this bill to drag on into this week, for Mr. Crone to make the stupid, irresponsible comment that he did this morning—I've got to tell you, from the government House leader's office, young observer, this government just can't understand victory. The lie was repeated: As soon as this bill, Bill 14, passed—the direct quote is: “‘As soon as we get this bill passed, the floodgates will open,’ said Crone, adding that Bryant has appointed about 40 new JPs over the last three years.”

There has been a scandalous agenda by some quarters to suggest that if somehow opposition members were being diligent in their scrutiny of this legislation, that was preventing the Attorney General from appointing new justices of the peace. What outrageous bull spit. For the government spokesperson to repeat it on the cusp of this legislation being completed in committee is offensive, incredibly dishonest, and I thought Charlie Harnick was the only Attorney General of this province who would have to admit under oath to having lied in the Legislature. It appears I'm mistaken.

This bill has nothing to do with the government's ability to appoint justices of the peace and with the incredible and chronic shortage of justices of the peace across the province. And the news item in which Mr. Crone repeats this dishonest observation is, of course, one by Brennan and Edwards about how cases are being dropped and delayed because of a shortage of justices of the peace.

You see, the government specifically refused to take advantage of any opportunities, many opportunities that were given it during the course of the discussion of the schedule that dealt with JP appointment so-called reform to talk about the hard matter of adequacy of the numbers of justices of the peace. Indeed, the government wanted to engage in precious little debate around that schedule at all and about the whole process.

There is a legitimate debate about whether or not Ontario should maintain its lay bar. It's a legitimate debate. Mr. Runciman, for one, has very skilfully articulated strong support for a lay bar. I have some doubts, because I've made the observation more than once during the course of the committee hearings around Bill 14 that, let's see, people who are to be allowed to be regulated as paralegals are going to have some pretty high educational standards imposed upon them, not inappropriately, to ensure they understand a significant area of the law in which they are going to be practising as paralegals, that it's in the interest of defending the public against ill-educated or untrained paralegals. Why, then, wouldn't this government have the same interest in defending the public against ill-trained or uneducated justices of the peace? If it's okay for laypersons to be justices of the peace, well, what's sauce for the goose should be sauce

for the gander. I'm not advocating it in this instance, but I simply point this out to talk about the inconsistencies here. If lay JPs are fine, why, they can learn on the job. Well, then, hell's bells, why don't we let paralegals learn on the job? JPs can put people in jail. JPs can release dangerous people back into the community. JPs can take away the liberty of the person by signing an arrest warrant. Even the most incompetent and untrained paralegal can't do that. Do you understand what I'm saying, Chair?

**1020**

The bill's going to go to a vote in terms of whether the bill shall be reported back this morning. It will; I'll make sure of that. Let me put it this way: I'll make best efforts again. We'll see how well the government manages it today.

I've got to tell you, in my pre-third-coffee moment this morning—when I had just had the first two and not the third—and I read the incredibly stupid Crone comment, I thought, “By God, there are at least a half a dozen more amendments that the government's got to move. With 20 minutes of debate on each one of those and a 20-minute bell, the government will have to wait till next week to get its bill through committee.” That's what Greg Crone provoked. But then I had the third coffee. I said, “We have to move this along,” not so that the government can get its JP reform legislation, because that has nothing to do with the number of JPs that it's going to appoint or that it hasn't appointed, but because folks out there, paralegals—who by now understand this bill is going to proceed, so now they've got to move to the next stage. People have to work to make the best out of what they may well perceive as a highly undesirable thing.

Those are the realities of it. Opposition parties can't defeat this bill; there are not enough members in the opposition. That's why they're opposition rather than government. It's a majority government. Government members could defeat this bill, but that's highly unlikely, because they wouldn't even agree to deferring clause-by-clause so we could get a few more days in of submissions, remember?

I want to thank the several legislative counsel, who have attended here depending upon which schedule was being debated, for giving us their incredibly competent counsel. That's why they're called counsel, amongst other things, and I appreciate their patience with us—maybe not all of us, but at least with me; I appreciate their patience with me.

Ms. Margaret Drent, our research officer—again, our research officers have been very co-operative and very efficient at producing material on short notice for our frequent requests—was able to provide us with her brief paper on the history and interpretation of the term “officer of the court.” This is perhaps what I find most offensive, not about the bill, but about the process. You'll recall, back when we were discussing schedule C, in particular section 26, which would amend sections 29 and 30 of the act, because it was after the government

had its amendment that said paralegals will be members of the law society. I still don't know what that means, but section 26 of the bill, which amends section 29, says, "Every person who is licensed to practise law in Ontario as a barrister and solicitor is an officer of every court of record in Ontario," and that's the way it's always been. I understand that.

But I also found it interesting that, clearly, paralegals were being excluded from that position as officer of the court. Notwithstanding that, like a couple of the other folks here, I've been an officer of the court for a good number of years now and knew what it meant when I was being called upon by a judge in a particular context to do certain things, I couldn't articulate specifically what it meant in its totality to be an officer of the court, nor could anybody else on the committee. And the counsel wasn't immediately available to us in committee. I thought, how can we vote on a section that we don't know anything about? Is that responsible as legislators? Because it was obvious that paralegals were being omitted from the status of officers of the court.

Ms. Drent's material, her memo, indicates that by virtue of being an officer of the court, it's clear that you have a duty, not only to your client, but to the court and to the administration of justice. She explains that's part of what it means to be an officer of the court. That's why—and Mr. Runciman would be quick to raise this type of illustration—lawyers can't, for instance, not only commit crimes in the course of defending their clients or advocating for their clients, but bring the administration of justice into disrepute, if I dare paraphrase Ms. Drent, because they're officers of the court. They have a broader obligation. They have an obligation to pursue their clients' interests fearlessly, with skill, with vigilance and with vigour. But they also have an obligation to the law and to the administration of justice.

I think that's a pretty sound responsibility to impose upon lawyers. Why aren't we imposing it upon paralegals, who, one presumes, may be appearing in courts or tribunals, from even the most modest anticipation of what it is that the law society will determine that paralegals are capable of doing? I remember requesting that the vote on that section be deferred, because the incredibly over-worked research staff, who had a long laundry list of papers to prepare, hadn't yet been able to come up with that one.

The government denied that. So the government members now are going to insist that this bill be sent back to the Legislature to be called by the government House leader as he wishes, obviously subject to as he's told by the Premier's office, for third reading without any consideration of the impact of that one section alone. It's just oh so typical of how this bill has progressed. It's been a "trust me" bill.

I've seen too much over the course of the discussion of Bill 14 alone to be lured, lulled into a "just trust me" state. Fool me once, shame on you. Fool me twice, shame on me, huh? I've been around the block a couple of times. Look at me, I'm no spring chicken.

1030

This isn't healthy stuff. This is very important stuff we're doing. It's important stuff we're doing when we're talking about a regulatory regime for paralegals. It's important stuff that we're doing when we're talking about the modest amendments that were entertained in terms of the Limitations Act. It's important stuff we're doing when we're amending the Courts of Justice Act to make structured settlements mandatory at the request of either party without guaranteeing indexation on the basis of the CPI, as was proposed so articulately by young Mr. Kolody—you remember him—from Ottawa. We never even really examined that. We heard the conflicting views, we heard different interests being articulated, but we didn't go to the next logical step and say, "Okay, let's take a look at this a little more closely"—not "Vote for it; move on."

I don't think the government's going to have a very full legislative agenda in the year 2007. As a matter of fact, I predict we will not be sitting a great deal at all. I predict we'll be coming back after a very lengthy winter break for a pre-election throne speech budget—maybe not even a throne speech, although that would be a good way to clear the decks of outstanding legislation because of the proroguing—then a budget and then, of course, an election campaign in which cabinet ministers get to make announcements of funding that are all going to occur after the next election, after October 4, without the scrutiny of opposition members by virtue of question period because, of course, the House won't be sitting.

I will, needless to say, be speaking to this bill in the full time slot allowed me.

I regret that, in the instance of paralegals, there hasn't been any reconciliation around that fundamental concern vis-à-vis conflict of interest. I want to make it clear: Is the law society incapable of regulating paralegals? Of course it isn't. The law society would be quite capable of regulating car salespeople—well, it would be. It has the licensing process. It has the disciplinary body. They know how to design and structure educational programs—they do. But there was that fundamental observation by both Ianni and Cory about the conflict of interest, which was never resolved and which was never rebutted. Obviously, in terms of the conflict, who has the concerns? It's the paralegals. There was nothing that I am aware of that was done to give them some higher level of trust and confidence in the proposed regulatory process, and it seems to me there were things that could have been done while the bill was being debated—not "Oh, just wait and see. Trust me." No. In this post-Nixon era—Richard, not Robert—it's just not acceptable to say, "Don't worry. Trust us." That low level of trust in the process is going to create some real difficulties for the regulators and the people being regulated.

I am amazed that there was no interest in discussing or investigating the option of government regulation until such a time as paralegals could be self-regulated. It's an option. I know it's not the current vogue, in-style flavour of the month, because the flavour of the month, for some

number of years now, has been self-regulation. But if it has been self-regulation, how come we're not doing self-regulation here?

I make the point again about dental hygienists: They've got their own regulatory body but aren't allowed to work independently of dentists. The dentist has got to be in the building, in the office, while they're performing the work. Whether that should be the case down the road remains to be seen. That'll be addressed at some point, I'm sure. We know, again, the debates that prevail around that. So here dental hygienists, who have to work under the oversight of a dentist, have their own regulatory body, as compared to being regulated by the regulatory body of dentists. Theirs is a self-regulatory body. Yet paralegals don't.

The argument, of course, is that they're not mature enough as a profession. We saw some wonderfully mature paralegals here who were practising paralegal work well into their mature years. I'm sure the accumulated experience and training is a great asset to their clients. But the profession isn't mature enough. Well, how do you make it mature enough? You regulate it; you state-regulate it. Mark my words: Were that the course, it would only take a few years, because what you're talking about is establishing that minimum standard, making sure that everybody who's in the profession has at least that minimum standard and then bingo, you have a mature profession. It has been very frustrating—very frustrating, very disappointing. I wish it weren't. I find some of these subjects intriguing, fascinating. They're of great importance to the public. The regulation of paralegals, the role of paralegals, the scope of practice of paralegals is of great importance to the public. It really is.

I think most lawyers—it would only be the rare one who wouldn't—appreciate the work of paralegals and use paralegals, employ them or retain them either directly in their offices or as partners in the delivery of “legal services,” this new secular language that's being adopted by virtue of this legislation. I, for one, have been very familiar with, for instance, the legal assistant program down at Niagara College, and other people in their own communities with their own programs—great confidence in that program. It has an incredible long-time faculty, brilliant, experienced people who have very high standards in their program—it's a tough course—and who've done an excellent job of producing very well-trained graduates.

Paralegals are important, the paralegal regulation process is important; so is the Limitations Act; so is the Courts of Justice Act; so is JP reform and so is schedule F. I don't want to diminish in any way, shape or form the incredible work that goes into legislative drafting and ensuring that we maintain an appropriate governmental stature in the realm of Her Majesty the Queen. So this is important stuff. I regret that the government felt compelled to rush it through. I don't care about the commentary that that might invite about how many submissions were heard. Yes, a large number of submissions

were heard. Unfortunately, it simply wasn't enough. We shouldn't be satisfied, as legislators, with “good enough.” We should be pushing ourselves to do the very best.

I will not be speaking to this bill any further—I know we've got the title now—because I don't think it addressed access to justice in a very realistic way at all. There are so many facets of access to justice that the bill simply ignored or, more importantly, not that the bill ignored, but that the committee ignored because the government wanted to accelerate this process.

I will be calling for a recorded vote on the title of the bill. When the Chair calls for the vote on the bill to be reported back to the Legislature, I will be voting against that on a recorded vote because I don't believe we have yet given sufficient consideration to the bill, and certainly we haven't had sufficient debate around some of the aspects of the bill that have not had as high a profile as others. But I'll not be discussing it any further; I'll wait for my opportunity during third reading.

1040

**The Chair:** Ms. Elliott?

**Mrs. Christine Elliott (Whitby-Ajax):** The title of this bill is, in part, An Act to promote access to justice, but because in my view it fundamentally does not provide increased access to justice, I'm not able to support it.

As we've gone clause by clause through the bill, I have indicated my concerns with various parts of this legislation, so I won't belabour them at this point, but there are just three main points that I would like to raise which, in my view, are illustrative of the lack of access to justice that this bill provides.

First of all with respect to schedule B, the section dealing with justices of the peace, I would certainly agree with my colleague Mr. Kormos that the Attorney General has always had the ability to appoint justices of the peace and to suggest that he can't appoint any more until this bill is proclaimed is absurd. He has always had the ability—in fact, he has appointed some justices of the peace without this bill being passed.

There are also some issues relating to the retirement age of justices of the peace. We have a real need for them in this province, and if they were allowed to work until they were age 75 instead of age 70, that would immediately free up a number of them who would be able to go into our courts and start working on the backlog of cases and allow the administration of justice in this province to proceed. I don't understand why this has been opposed, because this is the retirement age for judges, and why it should be different for justices of the peace, I'm not sure.

The other thing is the issue with respect to per diem justices of the peace. This would again allow justices to work outside of court hours and outside of court offices and would make them more readily available in situations where they're needed on a daily basis, over the weekends and so on. Again, I can't understand why this hasn't been allowed, because it would allow for the administration of justice.

With respect to schedule C and the whole issue of paralegal regulation, we all have agreed that it's a good idea, but in my view we haven't devoted the time and the energy in this committee to having a really fulsome discussion on these issues. I agree that it's not necessarily to say that the law society can't regulate paralegals, but I think we should have had a fuller discussion around the best way to do it. Whether it's regulation by the law society, whether it's complete self-regulation or whether it's a period of oversight by the government leading to self-regulation, I don't think we've done the law society any justice or the paralegal society any justice by jumping to this conclusion without hearing all of the information that, in my view, we need in order to make a proper decision on this issue. Especially in light of the reports by Justice Cory and Dr. Ianni which specifically indicated that they were not in favour of regulation by the law society because, in their view, there was this inherent conflict of interest, it's still troubling because if this is going to be a relationship that's going to work, everyone has to be in favour of it, and we've heard very strongly from a number of paralegals that they don't want to be regulated by the law society.

I think we really should have spent more time and energy and heard from all of the appropriate parties. Even though I know we had a number of people who made representations before this committee, I think we should have had a more thorough analysis of that point.

The whole issue of paralegals being perhaps officers of the court in the same way as lawyers are, I agree: None of us in this room, including the three lawyers who are here, really knew what that meant until we received the memo from Ms. Drent, but by that point it was after the fact and we'd already voted on it, despite a request to hold it down until we could have had a full consideration of it.

Similarly, I also see no reason why paralegals, following their training, shouldn't also be commissioners of oaths. This is a very practical situation that arises in day-to-day circumstances. When people go to see a paralegal to have documents completed, by and large most of them need to be commissioned, and there's no reason why paralegals shouldn't be able to do this. It means a trip to a lawyer in many cases for a lot of people who are of modest means, and in some cases it prevents them from even having their documents completed properly because they do have to go to see a lawyer and they simply don't have the funds to do that. In my view, it makes sense to allow them to be able to be commissioners but, again, we didn't have a full discussion of that.

Finally, with respect to schedule A and the change to the Courts of Justice Act to allow for a presumption in favour of structured settlements in a situation where a medical malpractice action has been proven by the plaintiff, this overturns hundreds of years of court precedents, which have traditionally allowed plaintiffs to receive their judgment in a lump sum. This shifts the onus and requires the plaintiff to prove that it's basically

unreasonable in order to receive a lump sum rather than a structured settlement.

I think you have to have pretty compelling reasons to overturn this. Though it seems like a lawyer-like issue of little importance, in actual fact, when you see these matters coming before the courts, what we're going to see as a result of this is that there's only going to be more money going to lawyers because this is going to be an argument that's probably going to take up several days in court. When you're dealing with plaintiffs of modest means, who are trying to bring forward these medical malpractice actions, this is going to have serious consequences for them and will probably be a deterrent to many of them from bringing these actions in the first place. So I think that there are serious ramifications for this change. It looks to me like it's a half-hearted attempt at tort reform, which isn't going to really achieve its purpose and in fact is going to end up impeding access to justice for many people.

Without going on anymore, these are significant weighty matters that I think we should have dealt with in greater detail before coming to a conclusion on them, and for this reason I'm not able to support this bill.

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Recorded vote. Shall the title of the bill carry?

#### Ayes

Balkissoon, McMeekin, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** That's carried.

Shall Bill 14, as amended, carry?

**Mr. Kormos:** Recorded vote.

**The Chair:** Recorded vote.

#### Ayes

Balkissoon, McMeekin, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** Shall I report the bill, as amended, to the House?

**Mr. Kormos:** Debate?

**The Chair:** Any debate on that, Mr. Kormos?

**Mr. Kormos:** As I said, I'm not going to speak to the bill any further, but I do want to thank the various staff. As I indicated, legislative counsel have been very helpful to us, and research, who have worked like dogs in the course of responding to research requests, all of which I can assure them I've read. I appreciate the civil servants

who have appeared here and provided us with assistance, and the numerous people who made submissions and who went out of their way to draft some very well-researched, well-prepared, skilful commentaries. Their contribution, as is inevitable to these processes, is invaluable.

I particularly appreciate some of the personalities who appeared: people like young Mr. Hong, a student, who had no direct interest or involvement in any of the facets of this bill but clearly had done some research in the course of being a student; of course, Mr. Kolody from Ottawa, who came here with a very personal story and tried to explain how elements of this bill, in this case the Courts of Justice Act amendments, applied to him.

Indeed, my gratitude to the members of the committee, who, notwithstanding that this has been, from time to time, a heated debate, have maintained an air of civility, notwithstanding having pursued some vigorous and sometimes even zealous opposition, and to you, Chair, for your management of what, from time to time, has been a rather interesting—process-wise—committee.

**The Chair:** Thank you, Mr. Kormos. Any further debate?

**Mr. Zimmer:** I too would like to offer my thanks to everybody on the staff side of the standing committee on justice policy, legislative counsel and the clerk for the work they've done on these many days of hearings over the last few months.

On behalf of the committee, my thanks to all of those people who presented or gave an oral submission or sent in a written submission. I want to assure them that we considered them carefully. They've all gone into the mix.

Lastly, the staff from the Attorney General's office, who assisted me in providing technical answers and other answers to questions posed by this committee that I was unable to do or that they were able to do better. Thank you.

**Mrs. Elliott:** I would also just like to add my notes of thanks. Being relatively new here and not being completely familiar with all of the procedures, I'd like to thank everyone involved for their considerable assistance, both procedurally and substantively.

**The Chair:** Thank you, Ms. Elliott.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Mr. Kormos has asked for a recorded vote. Shall I report the bill, as amended, to the House?

### Ayes

Balkissoon, McMeekin, Van Bommel, Zimmer.

### Nays

Elliott, Kormos.

**The Chair:** That's carried.

That concludes our consideration of Bill 14. I also want to thank all you folks from the government side, the opposition and the NDP, and everyone who assisted—the staff, ministry staff, legislative counsel, etc. Thank you very much.

*The committee adjourned at 1050.*





## CONTENTS

Thursday 28 September 2006

<b>Access to Justice Act, 2006, Bill 14, <i>Mr. Bryant</i> / <b>Loi de 2006 sur l'accès à la justice, projet de loi 14, <i>M. Bryant</i></b> .....</b>	JP-869
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JP-31

JP-31

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Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 15 November 2006

# Journal des débats (Hansard)

Mercredi 15 novembre 2006

**Standing committee on  
justice policy**

Human Rights Code  
Amendment Act, 2006

**Comité permanent  
de la justice**

Loi de 2006 modifiant le Code  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 15 November 2006

Mercredi 15 novembre 2006

*The committee met at 0916 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Vic Dhillon):** Good morning, everybody. Welcome to the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our first day of public hearings in Toronto. We've met in London, Ottawa and Thunder Bay.

To make these hearings as accessible as possible, American Sign Language interpretation and closed-captioning services are being provided. Because continuous interpretation is so demanding physically and mentally, the interpreters will be taking breaks from time to time. As well, two personal support attendants are present in the room to provide assistance.

The first order of business today is the motion for adoption of the subcommittee report. Can I get somebody to read the subcommittee report?

**Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I'll read it, Mr. Chair.

**Mr. Peter Kormos (Niagara Centre):** A fine-tuned machine.

**Mr. McMeekin:** Being the fine-tuned machine we are, I'll read it.

Your subcommittee considered on Thursday, October 26 and Tuesday, November 14, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code, and recommends the following:

(1) That the committee commence public hearings on Bill 107 in Toronto on November 15, 2006, and continue on all regularly scheduled committee meeting dates until the House rises for the winter recess.

(2) That the committee request authorization from the House to extend the committee's meeting time until 12:30 p.m. on its regularly scheduled meeting dates until the House rises for the winter recess.

(3) That the clerk of the committee commence scheduling witnesses in Toronto from the current list of those requesting to appear on a first-come, first-served basis.

(4) That the Attorney General be invited to appear before the committee for 15 minutes at 9:15 a.m. on Wednesday, November 15, 2006—which is why I'm reading this so fast.

(5) That witnesses on the London list be scheduled at a later date in order to accommodate additional requests made in response to the new advertisement.

(6) That an advertisement be placed for one day in all Ontario English daily newspapers—

**The Chair:** Mr. McMeekin, can I just ask that you slow down for the interpreters, please.

**Mr. McMeekin:** Okay—Ontario French weekly newspapers, ethnic newspapers in Ontario and also be placed on the Ont.Parl channel, on the Voiceprint service, the Legislative Assembly website and in a press release.

(7) That the advertisement state that hearings will commence in Toronto on November 15 and further dates and locations for hearings will depend on the response received.

(8) That the deadline for those who wish to make an oral presentation on Bill 107 be December 15, 2006, dependent upon the ability to place ads in the ethnic papers within a reasonable period of time.

(9) That a subcommittee meeting be called to review the numbers on the list and the response received from the additional round of advertising and make decisions regarding meeting dates, locations and witnesses to be scheduled.

(10) That the committee endeavour to hear from all those on the current list and from all those who request to appear by the deadline posted in the new advertisement.

(11) That organizations appearing before the committee be given 30 minutes each and individuals be given 20 minutes each in which to make their presentation.

(12) That the ad specify that opportunities for video-conferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location.

(13) That sign language interpretation, closed-captioning and attendants for the disabled be provided for all public hearings on Bill 107.

(14) That interpretation for languages in addition to English and French be provided on the request of witnesses requiring such interpretation for their presentations.

(15) That the committee meet in room 151, if possible, for public hearings and clause-by-clause consideration of Bill 107, depending on availability of the room.

(16) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(17) That the deadline for written submissions be the end of public hearings on Bill 107.

(18) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(19) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(20) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(21) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Chair, this is a report of your subcommittee.

**The Chair:** Thank you very much. Any debate? Seeing none, all those in favour? Opposed? That's carried.

#### HUMAN RIGHTS CODE AMENDMENT ACT, 2006

#### LOI DE 2006 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

#### MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** The first order of business today is a presentation from Minister Michael Bryant. Good morning.

**Hon. Michael Bryant (Attorney General):** Thank you, Chair. I believe I have 15 minutes.

**The Chair:** Yes.

**Hon. Mr. Bryant:** I've got a watch here, and if I'm able to finish early, then I will. I was here on time.

I want to start by thanking the Chair and the committee for giving me the opportunity to come here to provide an update on the bill and to provide you with amendments proposed to Bill 107. We consulted with people before introducing the bill. We heard a number of voices after introduction of the bill that said changes were needed—that significant changes were needed. We are endeavouring to heed that call today by providing amendments to the committee now, in the proposed form that they are. We are going to offer a technical briefing for those interested. Tomorrow afternoon, I believe, we're going to arrange a time and a place for MPPs. Should technical briefings be desired by others, we will make those available.

I'm going to be referring to a document that I've spoken to Mrs. Elliott and Mr. Kormos about. It refers to proposed amendments to Bill 107. There's a chart with the bill as it now stands and the proposed amendments, and this is being translated into 14 languages. For the

visually impaired, there's a number, to hear the text of the document. And I will endeavour to speak slowly, although it's not my nature.

I'm providing these amendments. It is a little unusual to provide proposed amendments at this stage in the proceedings. I'm doing so to give the committee the opportunity to consider the amendments and for the people who are appearing before the committee to consider these amendments, because it's many of the people who are appearing before the committee who called for these amendments. They fall into four categories. I'll go through each one and then I'll try to provide a little bit of context for them.

Firstly, amendments are being proposed to entrench in the bill a range of legal support services, entrenching the human rights legal support centre that will provide the legal assistance to complainants in Bill 107, in the legislation. The amendments are proposed to clarify that a range of legal support services would be provided, such as information, advice, assistance and legal representation. Amendments will confirm public funding for the human rights legal support centre. Amendments will provide that the services would be available across the province and clarify that any person who is or has been or may be an applicant seeking a remedy at the tribunal will receive those services.

Next, amendments are proposed to enhance the independence of the commission. I can say with experience that the commission does operate in an independent fashion from the government. These amendments entrench that independence:

—firstly, by requiring that the commission report directly to the people of Ontario through the Legislature;

—next, by ensuring that appointed commissioners would, for the first time, be required to have an expertise in human rights. Minimum requirements and qualifications will be established; and

—by amendments to clarify that the commission acts independently, in the public interest and at its own discretion, when it undertakes any of its functions.

Next, amendments are proposed, at the behest of a number of voices in the human rights community and by the Human Rights Commission itself, to strengthen the commission's investigative and public interest powers. These amendments include clarification of the commission's powers to ensure that it would have the ability to inquire into any matter, to examine documents, to question people and to compel co-operation with its inquiries. Amendments are being proposed and are before you to clarify that the commission would have the right to intervene in any application before the tribunal. And amendments would adjust the transitional provisions to allow existing complaints to continue to be dealt with through the existing system.

Lastly, amendments are being proposed to promote greater fairness at the Human Rights Tribunal of Ontario. We are entrenching the requirement that the rules of practice of the tribunal and the procedures facilitate fair, just and expeditious resolutions on the merits of the

matters before it. Amendments are before you to ensure that all applications to the tribunal are timely, within jurisdiction and would not be finally disposed of without the parties having an opportunity to make oral submissions. Amendments are before you and proposed that would restrict the tribunal's powers to dismiss applications without a hearing, eliminate the tribunal's ability to establish and charge fees, extend the limitation period for filing a claim from six months to one year and, lastly, ensure that the adjudicators at the tribunal have expertise in human rights.

I'll say, in closing, a couple of things. Firstly, these are not the only amendments under consideration by the government. We want to hear from the committee, from the people, and from members of the provincial Parliament in this committee and outside of this committee.

Before you is a fairly long list of procedural and process enhancements to Bill 107. I offer the following perspective on the human rights system. Fifty years ago, if you had a human rights complaint, you were basically on your own. There was no legal assistance being offered. There was relatively little expertise on the superior court, on the bench. In most cases, it meant no justice, because you had to retain your own lawyer at your expense and you'd argue a tort, a common law claim, before the courts. So 44 years ago a system was established, and the Human Rights Commission was to do two things. Firstly, it was to promote human rights, to proactively go forth and prevent human rights complaints from happening. Secondly, the commission was there as a place of expertise that would provide support to people and would resolve their complaints.

0930

What happened over the last 40-plus years, particularly in the absence of statutory amendments, is that procedures and process built up. There was no Human Rights Tribunal originally. It was not a highly adjudicative model, and in the 1970s, I'm told by commission counsel, it worked fairly well. But over the years, the adjudicative processes and procedures built up to the point where today, I would argue, we have procedural and process gridlock, and that results in delays. We say that justice delayed is justice denied so many times that sometimes we forget what it means. In this case, what it means is that the person who comes to the human rights system with a human rights complaint, an injustice, doesn't get that injustice rectified after a year, after two years, after three years—or more. And what that means is that after that year or two years or three years or more, they don't have the injustice rectified. For them, the delay does mean no justice at all.

So the goal here is to provide direct access. We've put into place some procedures and processes that we've heard from people are necessary for them to have confidence in the system. We are seeking to empower the commission to do that prevention work that the commission has not really been able to do at full capacity. And lastly, the new generation of human rights discrimination, in the form of systemic discrimination, is in

fact now going to be tackled by the commission, in the event that this bill passes, with a vigour that will allow the commission to bring systemic claims before the tribunal and intervene in the tribunal on claims that the commission views amount to systemic claims.

The due process that we are going to talk about in the coming days I think we ought to consider for just a second, and then, I can see, my time will be up. Due process in the criminal law system is there to protect the innocent and is there to ensure that all parts of the system operate fairly. There is a real focus on the accused when it comes to procedural rights. I don't know of any human rights voices that have come to me to talk about concerns around due process for respondents, the people who are the subject of a human rights complaint. Due process for the complainants, the victims of human rights, I think needs to be process that ensures speedy and effective remedies of human rights injustices. And at some point over the last 44 years, I will say with respect, some people have become so attached to the procedures and process that is the work of our human rights system that I believe that they are clinging to a due process as an end in and of itself when I would say to you that due process here is a means to an end: a speedy and effective resolution of the complaint.

I'm not sure that the victim of human rights is nearly as concerned about a big pile of process and procedures that leads to delays, and I would have thought that the victim of a human rights violation would be a lot more interested in a big pile of justice and remedies, and that's what we're seeking to bring forth with these amendments and this bill. It is human rights, after all; it is not about process or procedural rights. The system's about human rights.

I believe, and I'm getting that look from the Chair, that my time is up. I do not want to delay the people who have come here to present before the committee. Some of them have called for amendments that are now before you, and I know that you want to hear from them, as does the government. So I will cede my chair and leave it in your hands as to what happens next, but I presume that our first witness is coming on up.

**The Chair:** Thank you, Minister.

#### LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

**The Chair:** The first presentation is from B'nai Brith Canada: Ms. Anita Bromberg and Toni Silberman. Good morning.

**Ms. Toni Silberman:** Good morning.

**The Chair:** You may begin. You have 30 minutes.

**Ms. Silberman:** Thank you, Mr. Chair. Before we begin our allotted time to speak, we would appreciate a moment to comment on what just transpired. We really must object in the most strenuous terms to the actions of the Attorney General in announcing amendments to Bill 107 at this time. We, like so many other—

**The Chair:** Can I get your names for the record?

**Ms. Silberman:** Sure. I'm Toni Silberman.

**Ms. Anita Bromberg:** I'm Anita Bromberg.

**The Chair:** Thank you. You may continue.

**Ms. Silberman:** Thank you. We, like so many other community organizations, have invested considerable volunteer efforts in preparing our presentation and came here to address the text of the bill that has been on the table for some seven months. As of moments ago, that bill was effectively rewritten, and we, as the first presenters, are now placed in a very difficult and unfair position. As you can appreciate, we have absolutely no opportunity to consider the amendments, nor to develop comments on their content or even to assess the validity of the merits.

With respect, this is public hearing by ambush, and in a court of law this would constitute grounds for an adjournment with costs against the Attorney General. This is an especially cruel irony, since one of our many objections to Bill 107 is that the Attorney General proposes to strip away the important fair hearings requirements for the tribunal that are now imposed on it by the Statutory Powers Procedure Act. And if one needs a good illustration of why those procedural protections should not be tampered with, this is it.

We will proceed with the presentation we prepared prior to this morning's announcement. We cannot address any of the measures the Attorney General has just announced, as those who come after us will be able to. So in the interests of fairness, Mr. Chair, we respectfully request that we be given the opportunity to return to this committee in the near future to make an oral submission on the Attorney General's new version of Bill 107.

We do appreciate this opportunity to share with the members of the standing committee our concerns and recommendations regarding Bill 107 and hope they will assist you in your deliberations.

My name is Toni Silberman and I am the immediate past chair of the League for Human Rights of B'nai Brith Canada. Human rights advocacy has been my avocation and ultimately my vocation for over 40 years, including 16 years as a member of management with the Ontario Human Rights Commission. My colleague Anita Bromberg is the league's counsel and has been extensively involved in human rights issues and advocacy for decades.

Established in Canada in 1875, B'nai Brith is Canadian Jewry's oldest and only independent advocacy and community service organization, which some consider to be Canada's foremost human rights agency, specializing in and dedicated to combating anti-Semitism, racism, bigotry and hate in all its forms. We have enjoyed a long and fruitful association with the commission over the years, both as a partner and as a consumer.

The League for Human Rights endorses efforts designed to strengthen the Ontario Human Rights Commission and the protection of human rights in this province. We support the strengthening of the commission's ability and mandate to address systemic issues, pro-

actively and through complaints, as we do the reintroduction of both a race relations and disability rights secretariat as part of the commission's mandate. In fact, no new law is required for the former, since provisions for its existence still are found—

0940

**The Chair:** Ms. Silberman, can I ask you to just slow down for the sign language interpreters, please?

**Ms. Silberman:** I'm sorry.

We are pleased that their benefit is once again being recognized, but query their effectiveness if the commission is to be divested of the attendant enforcement mechanisms.

But today, we join our voice with the large number of groups, organizations and individuals, some of whom you have already heard during the summer hearings, who oppose Bill 107 as seriously weakening human rights protection in Ontario. Our concerns are with regard to both process and substance.

With regard to process, we believe it was regrettable and counterproductive to reject the many calls from advocacy groups and concerned individuals for open public consultations prior to drafting a new bill on human rights reforms. Members of groups protected under the Human Rights Code, complainants and respondents within the current human rights system, and human rights staff were excluded. The resulting one-sided bill is reflective of this lack of representation.

There is no question that the commission's complaints process is in need of review and resources in order to operate more efficiently, and who better to inform that review than those who require and use the system—not just lawyers, but the clients and those who operate the system. It is our hope that the Premier's and the Attorney General's public commitment to ensuring broad consultations during the hearings will give, to all those who wish, adequate opportunity to express their views on the proposed legislation.

With regard to substance, the Attorney General asserts that the human rights system has not changed in more than 40 years. We remind the members that in 1982, under the Davis Conservative government, the code was completely revoked and rewritten, and the commission overhauled. This happened again in 1986. In fact, the commission has, over the last 40 years, reviewed and restructured its complaints process and infrastructure on an ongoing basis to more adequately address changing needs of an increasingly diverse society. Grounds of protection were added and public education was enhanced, leading to a tremendous increase in the number of cases coming forward. Unfortunately, the requisite resources to support this increased demand for services were not given, and a backlog was created. The commission became, in effect, a victim of its own success.

However, for the government to now propose eviscerating the commission, whose work formed the template for all subsequent provincial, federal and international human rights commissions, and replace it with a system whose track record elsewhere is less than stellar, to

decimate an established system before it is given the opportunity and resources necessary to allow it to do its work, is, we believe, short-sighted and dangerous to the protection of human rights in Ontario and will result in the denial of the very equality and access to justice that it purports to advance for the very people it purports to help.

Bill 107 proposes a system of direct access that was almost universally vilified as being ineffective, inefficient and costly in the 1980s, when it was first attempted in British Columbia, and again when it was reintroduced more recently. In fact, this spring a member of BC's Legislative Assembly introduced a bill calling for reinstatement of the old system, pointing out, in particular, that systemic instances of discrimination have gone unaddressed, that the public interest is no longer represented and that the entire human rights system in BC has been weakened. These and other concerns with direct access also compelled the former chief commissioner of BC's Human Rights Commission to come to Toronto to speak out against its implementation here.

We find the proposed legislation so seriously flawed in its efforts to create a fair, expeditious system intended to generate effective remedies that we would suggest removing it from consideration and starting again, once all interested parties have had the opportunity for input—a more fitting time, perhaps, to announce amendments.

We will now outline some of our concerns in summary form and urge you to read our submission in its entirety. For a summary of our summary, we refer you to the myths and reality documents inside the folder.

Bill 107 is fundamentally flawed in that it virtually guarantees that human rights protection and the opportunity for prevention will be eroded. As Ontario's public human rights enforcement body, the commission is charged with the responsibility of forwarding as public policy the provision of equal rights and opportunities without discrimination and the creation of a climate of understanding and mutual respect for the dignity and worth of Ontarians. When one removes that public body from its core function, the ability to affect that public climate is lost, as is the potential for remedies that not only address discrimination but also ensure that the requisite system-wide programs and policies of prevention are in place. To attempt to bifurcate the individual from the systemic issues is misguided and self-defeating. Disabled, racial, religious and historically disadvantaged people recognize through experience the necessity of public interest remedies in virtually all cases affecting them and that they should be an integral part of, not eliminated from, human rights reform. Bill 107 does not recognize that necessity.

You may hear from the proponents of the bill that direct access is a panacea. We believe that Bill 107's promise of direct access is illusory. It does not mean that every person will have his or her day in court. It means, rather, that the complainant may apply to the tribunal directly. It does not mean greater access to an oral hearing into the merits of the case or, indeed, greater

access to a hearing at all. It simply means the complainant will have the right to file a paper application directly with the tribunal that has unfettered discretion to make its own rules, more powers to gate-keep and dismiss a complaint without either an investigation or a hearing than the commission currently does, no mechanism to enforce orders and settlements from which no appeal may be made, no means to adequately address the public interest, and no oversight.

You may hear that the bill will strengthen the Ontario Human Rights Commission. On the contrary, we believe that it eviscerates the commission and renders it a toothless tiger. The removal of the commission's total investigative, mediation and litigation functions give it no effective means of promoting systemic change precisely because it is left with no viable role with respect to individual complaints. At the same time, Bill 107 will make the complaints process more onerous and, in some cases, impossible for both complainants and respondents by requiring them perhaps to conduct their own investigations and gather evidence within an environment that is already poisoned by the very filing of a complaint.

Under the current system, an investigation takes place prior to the referral of a complaint to the tribunal. The investigation has several functions: First, it permits settlement discussions to take place in the context of the commission's investigation findings as to the facts and legal implications of a particular complaint; secondly, it provides an informed basis for a decision as to whether a case should be referred to the tribunal; and at the hearing itself, it gives the commission evidence to present before the tribunal and provides a further impetus to settle when the tribunal's processes begin.

Under the bill, no such investigation might occur. Complainants will not have the statutory authority to force the production of documents and will certainly not, for example, be permitted access to an employer's premises to interview witnesses. It will be up to the tribunal to interrupt its process, having somehow determined what evidence it needs, with directions to the parties to supply what evidence they can muster before the proceedings can continue. In the case of respondents, there will be no means of avoiding the tribunal's procedures, even in the case of the most frivolous complaints. In the case of both, the opportunity to resolve complaints without litigation at the tribunal, currently provided by the disclosure of the commission's investigative findings, will vanish. The tribunal will either have to form a conclusion based on its impression of the parties, or determine what evidence is required for the hearing to proceed. It seems somewhat irrational, inefficient, counterproductive and gratuitously costly to have a complaint come to the tribunal and then have the investigations occur, as proposed in Bill 107.

The proposed reform is based on the position that investigations into human rights complaints are useless; indeed, that they are themselves a barrier to human rights protection. What the government has forgotten is that Human Rights Codes are the accessible Charter of Rights

for ordinary people. The public investigators mediate, conciliate, negotiate and resolve cases for the parties at a fraction of the cost of expensive lawyers and adjudicators and usually in a fraction of the time. More importantly, the investigators are trained to address the future. When resolving a case, they get employers to conduct staff training, and create anti-discrimination and harassment policies and internal systems, so that the offending conduct does not happen again. In particular, mediation and investigation functions are necessary to fully address racial complaints because of the socio-political historic factors involved. Throwing money at a privatized system to pay for some form of legal assistance for complainants will not produce these results.

0950

In his address to the Legislature when the bill was introduced, the Attorney General said that the commission would have the right to intervene in individual cases under Bill 107. The bill, up to this point, provides no such right, thus losing the potential for significant changes in, and development of, human rights legislation in jurisprudence. For the commission to have any meaningful power to intervene and determine which cases merit intervention, it would require notice of cases proceeding at the tribunal. No such mechanism exists in the bill.

With regard to systemic investigation, the argument that a commission freed from responsibility for individual cases will better address systemic issues is seriously flawed.

First, by giving the commission no role with respect to the processing, investigation, mediation or prosecution of human rights complaints, and by reducing the dispute to a contest between two private parties, Bill 107 will both undermine individual rights and make it impossible for the commission to fulfill its public role.

The complainant's primary goal, and that of his or her lawyer, is often to obtain money and move on. The respondent's primary goal is to pay as little money as possible to bring the dispute to an end. Neither has much motivation to change the conditions that led to the complaint in the first place and thus root out and prevent future acts of discrimination. The Human Rights Commission currently seeks all of this when it processes and ultimately prosecutes a human rights complaint.

Second, it is primarily the commission's investigation and compliance function—its involvement in all aspects of individual cases—that highlights areas and trends—

**The Chair:** Ms. Silberman, could I just ask you to slow down, please. I know it's difficult, but please do your best.

**Ms. Silberman:** I'm so sorry. I'm conscious of the time.

**The Chair:** Thank you.

**Ms. Silberman:** —that highlights areas and trends that require systemic measures and policy directions. Otherwise, such efforts will be informed by anecdotal information and hearsay, rather than by facts and statistics.

Individual cases inform systemic work. Systemic work has a point of entry through individual cases. Individual complaints provide the raw material for systemic interventions.

Bill 107 contains, so far, no requirement for public interest settlements or remedies. The tribunal is not required to impose them; the legal support centre, if and when it is created, is not required to seek them; and the parties certainly cannot be expected to sacrifice their own self-interest for the public good. By removing the public prosecutor from the mix, the public protection is also removed.

Third, it is not the case that there is always a clear distinction between individual cases and systemic cases. Human rights complaints do not walk through the door with the word "systemic" labelled on the front—would that they did—yet experience shows that most cases have some systemic component to them.

The case of Michael McKinnon, the aboriginal prison guard whose long battle with the provincial ministry of corrections was recently chronicled in the *Globe and Mail*, illustrates this point. Under Bill 107, this would have been just another individual case of racial name-calling in an isolated workplace. Because the case was investigated and prosecuted by the commission, the deep-rooted and horrific racism that has been allowed to fester in provincial jails amongst prison guards has been revealed and the most far-reaching public interest remedies have been imposed.

You may also hear that Bill 107 gives the commission permission to apply to the tribunal to seek orders related to cases of a systemic nature. The commission, thus far, will be allowed only to seek orders. Such a provision is mere window dressing, however, absent the resources, authority and staff necessary to investigate complaints; the ability to retain expert witnesses; and the loss of the commission's highly regarded legal team that currently withstands the attacks from corporate and government counsel. Further, the preconditions for seeking such an order are onerous, and the granting of the right to pursue a systemic complaint is solely at the discretion of the tribunal. It does not specify whether the commission will have carriage of such complaints. In addition, with respect to systemic cases, should an order be granted, the legislation allows only for orders dealing with future practices. There is no compensation or any sort of restitution for the current infringement for the individual on whose behalf the commission would seek the remedy.

You may hear that Bill 107 will remove the so-called gatekeeping function which, it is alleged, creates an inefficient and protracted complaints process. Bill 107, in reality, merely provides for a change of gatekeeping venue. Section 34 of the bill allows the tribunal to make rules which may excuse it from the requirement to hold a hearing and which will permit it to restrict the opportunity of the parties to present their evidence and make their submissions. The bill does not set out the circumstances under which such rights could be curtailed by the tribunal's rules, lending the lie to the promise that every person will have his or her day in court.

You may hear that the efficiency of the direct-access model will result in fewer delays and no backlog. Currently, the publicly funded commission handles 65,000 inquiries per year, resulting in an average of 2,500 formal, signed complaints. Of those, close to 75% are settled to the satisfaction of both parties, thus obviating the need for a referral to the tribunal. These settlements are achieved through a publicly funded process, without the need to hire and pay for lawyers. Of the remainder, between 100 and 150 are sent to the tribunal for determination. Of those, the tribunal renders relatively few decisions on the merits each year, thus generating a considerable backlog.

If there is a considerable caseload at the commission—an agency replete with experienced officers operating within a system with which the public has familiarity for 44 years—query how the tribunal, with its own backlog, operating under a new system conducted by unfamiliar staff and navigated by members of the general public without assistance, could handle the sheer number of inquiries and complaints without creating an even greater backlog of complaints.

Gatekeeping under direct access will take place not only at the tribunal but also in the process of determining whether an application will be brought at all. No amount of funding that this or any government in the foreseeable future can realistically be expected to provide will afford legal counsel for 65,000 potential complainants. That the commission has only 2,500 rather than 65,000 formal complaints can be attributed in part to the fact that commission intake staff provide advice to the public and direct individuals to other agencies where appropriate. Without such intake staff, the number of individuals wishing to file complaints will be much in excess of 2,500. Those who are obliged to hire counsel on their own will self-screen, based on their ability to pay.

With respect to education, you may hear that Bill 107 gives the commission the authority to research, inquire into, recommend and educate in order to eliminate discrimination. We wholly support the espoused desire to strengthen the commission's mandate in this area. However, decades of experience have proven that without the ability to invoke the full force of the law, without effective enforcement mechanisms to add weight to the principles, goodwill and moral suasion only go so far and may not achieve the desired results.

With regard to fairness, we believe that the bill gives far too much power and discretion to the tribunal. At the same time, it reduces rather than increases measures for the tribunal's oversight and accountability. It does so in several problematic ways. Under Bill 107, the tribunal will be given complete and unfettered authority over the complaints process, with unlimited authority to develop its own rules and regulations outside the public arena, and will have primacy over the Statutory Powers Procedure Act, thus negating any minimal procedural protections afforded by the SPPA, calling into question the provision of natural justice and fairness.

Moreover, Bill 107 dramatically reduces the extent to which the courts can hold the tribunal accountable. It

strips away the current right to appeal to the courts from decisions of the tribunal. Dissatisfied parties at a tribunal hearing will only be able to apply for a review if they demonstrate that the tribunal decision was patently unreasonable, a far higher threshold than on appeal. Bill 107 thus imposes a toxic mix of potentially unfair rules of procedure at the tribunal with less judicial oversight.

Under Bill 107, no agency is charged with enforcing settlements and orders, in contrast to current practice where, if either are breached, the commission takes all steps necessary to enforce the terms of the settlement or order, such as the garnishing of wages. Surely, one cannot expect a successful complainant to track down any monetary compensation owing or demand the enforcement of an order from an employer. At the end of the day, a remedy ordered by the tribunal is of no value if the order is not complied with.

#### 1000

One of the positive aspects of the present system is the autonomy under which both operate and the separation of the commission's role as investigator and prosecutor on the one hand and the tribunal as neutral judge on the other. The tribunal is currently viewed as a distinct court of next resort, separate from the commission process. To now render the tribunal the court of only resort, from which there is no appeal mechanism, would not only create a conflict of roles within the tribunal system as police, judge and jury, but would also cast aspersions on the neutrality and objectivity of the process.

We are also concerned about the perceived conflict of interest and potential for bias in having both the tribunal and commission function under the auspices of the Ministry of the Attorney General, whose lawyers defend government respondents in human rights cases. It is interesting to note that more human rights complaints are filed against the government than against any other respondent. More fundamental is the inherent unfairness of requiring complainants to consider hiring their own lawyers, while government respondents will have the benefit of paid career government counsel.

We are especially troubled that even as we speak, in fact even prior to the onset of these hearings and even before this Legislature decides whether or not to grant these new powers to the tribunal by passing or rejecting Bill 107, the tribunal is, according to its own website, already at work planning for and hiring towards its implementation. We are concerned that this action makes a mockery of these hearings.

The need to secure legal representation and advice—currently a statutory right—will put an onerous burden on the majority of complainants, who are already victimized by alleged discrimination. We are not sure how the funding will operate, but the offer, for example, of some form of legal aid would benefit only those who fall within a certain income category. We fear as well that legal aid, an already overtaxed system, will not be in a position to adequately fund such a program, nor are many community legal aid clinics in a position to have carriage of these complaints. We are concerned that this will create an ethos of justice by means test, whereby justice

will be beyond reach of the average person, rather than more accessible.

In the event that the complaint procedure were privatized and that every individual does receive contracted legal representation, query the cost, particularly when the Attorney General last week fundamentally rejected calls for more funding for the human rights system. The Attorney General was quoted as saying in response to the recommendation by representatives of disability and racialized communities for additional resources for the commission, "If you've got a broken engine, you don't fix it by putting more gasoline in it. First you need to fix the engine and then you need to make sure it has enough gas." We agree with the sentiment, but believe that the Attorney General, to extend the analogy, rather than fixing the engine, is throwing it out and replacing it with a model that is not even on the Consumer Reports list of recommended engines.

*Laughter.*

**Mr. Kormos:** Excuse me. Can Hansard please report that there was much laughter in response to the last comment, including by myself.

**Ms. Silberman:** We in Ontario live in a democracy where injustice and discrimination are condemned by political philosophy and punishable by law. We believe that these hearings provide a golden opportunity for Ontario to once again stand in the forefront of progressive, dynamic human rights advancement, which will nurture its reputation as a province dedicated to the enhancement and equality of all its citizens. We agree that changes to the existing human rights system are a prerequisite to achieving the goal of ensuring equality and fairness. We, however, believe that Bill 107 is not the solution. We have a number of recommendations, but will only highlight a few.

We recommend that the current infrastructures be maintained and that the code and related procedures be amended to ensure that the complaints process operates more effectively and efficiently. This, in our view, means improving, not slashing, the public enforcement system through the Human Rights Commission.

**The Vice-Chair (Mrs. Maria Van Bommel):** Ms. Silberman, you have one minute left.

**Ms. Silberman:** Thank you. Unless the system is adequately funded, no reform will work. Rather than infusing a new system which may prove far more costly with additional funding, we recommend an administrative audit of the commission and an increase in its funding in the appropriate areas to allow for greater effectiveness. We recommend a complaints process wherein the best practices of the commission and the tribunal could be maximized, a process whereby complainants could either elect the commission route or the tribunal's direct access at relevant mileposts along the complaints continuum. If this option is considered, however, it is critical that direct access not be initiated until and unless the public enforcement process through the Human Rights Commission is improved and properly funded.

Honourable members, as you have heard and will no doubt continue to hear, considerable promises have been

made with regard to human rights reform. Human rights are about fairness, justice and equality for all individuals and groups. The commission is, in many instances, their only voice. Bill 107 potentially silences that voice, leaving us with a legal system but certainly not a system of justice.

Thank you for your time and your attention.

**The Vice-Chair:** Thank you very much for your presentation. Mr. Kormos?

**Mr. Kormos:** There are people in the room who are standing. Some of them are going to be here all day. I'm no expert at these sorts of things—as you know, I'm only from small-town Ontario—but it seems that if a row of chairs were put at least in the front here, we could accommodate four people who deserve to be accommodated, unless we're breaking some fire code or Liquor Licence Act regulation.

The other observation is that in terms of signers, if signers were to stand here, would it be helpful to presenters in terms of allowing presenters to gauge their speed? I'd be prepared to move over here—no qualms about sitting close to Ms. Elliott—so that it wouldn't interfere with my sightlines, unless that's problematic with the signers.

*Interjection.*

**Mr. Kormos:** Okay, the signers want to stay there.

**The Vice-Chair:** I would ask, then, that the signers make that decision. I have no objection as Chair, so the signers would be—

**Mr. Kormos:** Fair enough. Can we get some chairs put in here?

**The Vice-Chair:** In terms of the chairs—

**Mr. Kormos:** The final thing, Chair, on a point of order.

**The Vice-Chair:** Yes, Mr. Kormos?

**Mr. Kormos:** This is very important stuff. People here are deadly serious, people both advocating for the legislation and critical of it. It seems to me that the government ought to have all of its seats at this committee table full. It is irresponsible and an insult to these people, both advocates for the legislation and critics of it, for the government to have empty seats in this committee on the very first morning of its proceedings.

**The Vice-Chair:** I'm sorry, Mr. Kormos. That's not a point of order.

**Mr. Kormos:** Well, it should be.

**The Vice-Chair:** I'm sure you feel that way, Mr. Kormos. In terms of the chairs, we are right now trying to find an overflow room. I would anticipate there may be even greater numbers coming in, so we're trying to accommodate everyone.

**Mr. Kormos:** But it's not just overflow. There are people here who are support workers, for instance, who have to be in this room and who have to be accommodated.

**The Vice-Chair:** I absolutely agree. They need to be able to sit down. It's going to be a long day, no question about it. We're trying to work on it.

Thank you very much for your presentation.

ASSOCIATION OF  
HUMAN RIGHTS LAWYERS

**The Vice-Chair:** I now want to call forward the Association of Human Rights Lawyers, Mark Hart. Welcome, Mr. Hart. You have 30 minutes in which to make your presentation. If you don't use up the entire 30 minutes, that gives members of the committee an opportunity to ask questions or make comments on your presentation. That would be done in rotation. So if you would please start by stating your name and your association, please.

**Mr. Mark Hart:** My name is Mark Hart. I'm here with Yola Grant and we're here on behalf of the Association of Human Rights Lawyers. Before I start, I want to thank Toni Silberman for the presentation she just made. I knew Toni Silberman when she was the public relations person at the Ontario Human Rights Commission. It's good to see that she's still performing that role.

1010

I'm a lawyer who has specialized in the area of human rights for the past 17 years, and particularly specialized in representing claimants in the current human rights system. I formerly worked as counsel at the Ontario Human Rights Commission, and I'm a founding member of the Association of Human Rights Lawyers.

The association itself is comprised of lawyers and community legal support workers who work on the front lines of the current human rights system. Our clients are members of racialized groups, persons with disabilities, women, members of our First Nations, members of the lesbian, gay and transgendered communities, and other clients who are poor, vulnerable and victimized. We struggle to assist our clients to make their way through a Byzantine, disempowering and disenfranchising human rights process which is fraught with horrendous delays.

The current state of affairs is completely unacceptable, and is notorious to anyone who actually works on the front lines of the current system, as we in the association do. This horrendous situation has not gone unnoticed. In 1992, a report was released by a blue-ribbon task force headed by Mary Cornish, who's in the front row today. She's one of the most prominent human rights lawyers in this province. The task force also included leading human rights advocates from racialized groups, the disability community, the lesbian and gay community and the First Nations community. This task force crossed the province and heard from everyone who wanted to speak. Giving careful and deliberate consideration to all they heard, this task force recommended that the existing human rights process be substantially reformed and replaced with a system where human rights claimants have direct access to a hearing at the tribunal, with publicly supported legal representation available to them, which is precisely the model we see before us in Bill 107.

In the year 2000, another blue-ribbon task force, this time headed by Justice La Forest, formerly of the Supreme Court of Canada, released a report to reform the federal human rights system, which is the same as the one in Ontario. This task force crossed the entire country

and again heard from everyone who wanted to speak on the issue and came to the same conclusions as the Cornish task force.

The plight of human rights claimants in this province has not gone unnoticed by the international community as well, which in 1998 condemned Canada and this province for its backward and paternalistic human rights system and urged Canada and this province to guarantee that human rights claimants have access to a hearing. Through all these years, the association and the many vulnerable clients we represent have watched and waited as governments came and went and still no action was taken on human rights reform. Now, finally and at long last, Bill 107 provides us with a golden opportunity to achieve what so many have been studying, recommending and advocating for so many years.

What are the problems with the current system and how does Bill 107 address them? The problems with the current system are legion, and in the interests of time, I'll address only a key few.

First, the problem of the commission currently having a veto over whether or not a claimant gets to have a hearing into their human rights: What happens in the current process is that behind closed doors, a bunch of people whom the claimant has never met will sit in a room together for a day and they'll review a big pile of documents relating to some 30 to 40 cases at a time and issue their edict as to which cases get tossed out and which cases go to a hearing. The statistics show that the commission vetoes three out of every four cases that come before it—these faceless people behind closed doors—and then they issue a decision that is usually less than a page long and has three or four bullet points with inscrutable reasoning. If anyone thinks that this current system is still working, I would ask that you take a moment to sit with one of our clients and hear about the devastation they felt when, after they've pursued their complaint through the commission's process for so many years, they get tossed out with this little slip of paper with this inscrutable reasoning.

Bill 107 will fix this by getting rid of the commission veto over whether or not claimants are entitled to a hearing and ensuring that all claims get filed with the tribunal and have access to a hearing where the claimant will actually get to interact with the decision-maker, participate in the process and understand why their case wins or loses.

The next significant problem in the commission is the inordinate and inexcusable delay. You've heard about this from your constituents many, many times, that the delays are horrendous at the commission, and I'm sure there are a lot of statistics thrown around that you may have heard, and may yet hear, at this committee hearing. The significant one for our clients is that when a case goes to investigation, the average time it takes for the commission to deal with the case is three years. I've represented clients where the cases have taken six, eight, or even 10 or more years to go through this unbelievably long investigation process. This is an unacceptable state of affairs.

Then, if you make it through that, there is the incredible waste and duplication. What happens if you're one of the precious and lucky few who actually get to a tribunal hearing is that you have to start all over again from square one. All of the same witnesses who were interviewed in the investigation have to be called to give evidence again before the tribunal, all of the same documents that were produced in the investigation have to be tendered again before the tribunal, and all the legal arguments and submissions have to be dusted off again and re-presented at the tribunal, only this time the tribunal hearing is taking place some four or more years after the events at issue. Once again, Bill 107 will fix this problem by eliminating the wasteful and duplicative step of going through the commission process and allowing complainants to proceed directly to the tribunal.

The final problem I want to address is that in the current system, the commission has conflicting roles. Right now, the existing commission is burdened with the role of processing all of these individual cases and, during the course of doing that, maintaining its neutrality in making decisions about which cases go forward and which ones get tossed out. At the same time, the commission needs to be an advocate to pursue initiatives to address systemic discrimination in the province, including initiating complaints and prosecuting cases at the tribunal. These conflicting roles of neutrality versus advocacy are simply untenable. In addition, what routinely happens at the commission is that its resources get consumed by the backlog of cases, leaving precious little left to pursue systemic initiatives. Bill 107 will fix this problem by separating these conflicting roles. Rather than having two public agencies—the commission and the tribunal—processing individual cases and acting as a neutral decision maker, Bill 107 will clearly place this responsibility in the hands of one public agency, the tribunal. This will free up the commission to focus resolutely on its role as an advocate for the furtherance of human rights in this province.

In the previous submission you heard reference made to what's going on in British Columbia. The fundamental difference between what's happening in British Columbia versus what is being proposed in Bill 107 is that the government eliminated the commission in BC, whereas what Bill 107 does is free up the commission from being burdened by the individual complaint process and allows the commission to be a strong advocate for human rights and pursue systemic initiatives.

The association recognizes that Bill 107 is not perfect, and my colleague will be speaking to some of the key amendments we seek to this important and vital legislation. But we are here to say to this committee today that the fundamental structure of Bill 107 is sound, it is in keeping with the recommendations of the reports which have studied these issues, and it is consistent with our international obligations.

We are aware that there are some who disagree, some who have been our colleagues in the human rights community over the years. We have seen the so-called blueprint for reform which is being promulgated by David

Lepofsky and two other dissenters. No doubt you will hear about this blueprint in submissions to come. I like to call this blueprint two steps backward, because it does nothing to address the fundamental structural problems in the current system and promises only more of the same. Throwing more money at a broken system will not work. It has been tried with the commission many times before; the money just gets gobbled up and the delays and backlog of cases keep growing.

At these hearings, I'm sure you have heard and will continue to hear a lot of strongly expressed rhetoric on both sides of this issue, and it may seem to you that we are talking about two completely different pieces of legislation. In order to find your way through this debate, what I urge you to do is go to the experts who have studied this issue and who have consulted with people across this province and across this country, including hearing and considering the submissions of the very authors of the blueprint for reform and all the others who will be speaking before you in these hearings. Read the Cornish report, read the La Forest report, and see how Bill 107 embodies the recommendations and will repair and reinvigorate the human rights system in this province and make it a beacon for other jurisdictions struggling with the same problems.

#### 1020

I wish to make one more point before ceding the floor to my colleague. There are some who have been reported in the paper as keeping a kind of score card of the people who appear before this committee, counting up how many have spoken in favour and how many have spoken against. I urge this committee to see this as a very simplistic form of arithmetic that does not accurately gauge the widespread support for Bill 107.

As you are listening to the various presenters before this committee, I encourage you to ask yourself three questions:

First, ask yourself, is this presenter speaking as a representative for some larger body, or is the presenter speaking solely for herself or himself or on behalf of a group whose views have already been heard?

The second question: Does this presenter or any group he or she represents have actual front-line experience with the human rights system and demonstrate this knowledge, experience and expertise in their submissions, or does she or he, while perhaps being a member of a community protected by the Human Rights Code, not have this kind of important front-line experience with the current system?

Number three: Is the presenter merely parroting views which already have been heard by this committee without any real substantive understanding of the issue, or is this presenter providing a fresh, thoughtful and considered analysis of Bill 107?

When you answer these three questions, I believe you will have a much better sense of the considerable weight of support behind Bill 107 and the house of cards which has been built by the dissenters.

I turn now to my colleague.

**The Vice-Chair:** If you could identify yourself for Hansard before you start.

**Ms. Yola Grant:** My name is Yola Grant. I practise in the area of human rights, employment and labour law. I was formerly a member of the Attorney General's office and also functioned as counsel to the Human Rights Tribunal of Ontario. In that role, I was privileged to work on the first set of rules of procedure for that tribunal. I'm now in private practice and, like Mark, belong to the group of human rights lawyers who work on the front line, representing many different franchise claimants of various vulnerable groups who seek the protection of the code.

**Mr. McMeekin:** Just before you go on—I'm sorry. Mr. Chair, I'm having difficulty hearing the presenter.

**Ms. Grant:** Okay, I'll move this up. I'll attempt to speak louder and closer.

**Mr. McMeekin:** It's a combination of the noise outside—

**The Chair:** We'll asked them to quieten that down.

**Ms. Grant:** Thank you. I will make three main points dealing with the powers and mandate of the commission, the powers of the tribunal, and the supports being offered under Bill 107 for applicants to the tribunal.

First, dealing with the commission, I want to make three simple points, a couple of which appear to have been addressed this morning by the minister's announcement. The first is that the Association of Human Rights Lawyers strongly supports a commission's role to intervene in any application in which, in its sole discretion, it determines there's a public interest to enforce, and, secondly, that the commission retains its power to initiate its own applications. We know that this is a power the commission has had but not exercised in its many years of existence, and we would certainly encourage the government to retain that power and in fact to flex their muscles in this area. The third point regarding the commission's power is that it retain its investigative powers. I note that the minister this morning announced certain amendments. I'm not in a position to compare and contrast them with the current powers, but I'd ask that the powers to compel that the commission currently enjoys should be retained to allow them sufficient authority to effectively investigate systemic cases of discrimination in this province.

Regarding procedural fairness, I have a few more points to make, and I'd like to remind everyone that you should have a copy of this three-page submission. I gave copies to Ms. Stokes earlier and I believe it was distributed. On page 2 I deal with the tribunal process. I have broken it down into two areas: procedural fairness as well as substantive fairness.

On the point of procedural fairness, the first three bullets deal with permitting the tribunal's power to ensure a timely resolution, the tribunal's having flexibility similar to that enjoyed by the Ontario Labour Relations Board to stream cases depending on the complexity of the cases, and also depending on the party's expression of their wish regarding how the matter might be handled.

The third point is to ensure that the practice and procedural rules incorporate any necessary accommodations to optimize the participation of parties, whether that is translation or use of other assistive devices or methods of convening a hearing, electronically or otherwise, to ensure that parties can truly participate from wherever they are socially located.

The fourth point is one that the Association of Human Rights Lawyers feel quite strongly about: to depart from the long-established practice of dismissing complaints without providing reasons that a complainant can make sense of. So we're asking that Bill 107 limit the opportunity for summary dismissal of cases to only those applications that clearly fall outside the jurisdiction of the tribunal. When I say "clearly fall outside the jurisdiction," it might be something as simple as a matter that belongs elsewhere, that the statute to which that dispute applies can be clearly pointed out and the would-be applicant convinced to take their case elsewhere without umbrage, without concern that they are missing out on an opportunity to have their matter resolved.

The fifth bullet requires the tribunal to provide written reasons. This is something again that goes to one's notion of fairness. Particularly in dealing with dignity interests, it's important for applicants to leave a process, even when they are dismissed, understanding why they've been dismissed and having some sense that they've been heard and their matters addressed on the merits.

A final point, probably the most important point among these that I don't believe was addressed by the amendments mentioned by the minister this morning, is to require the tribunal, before dismissing any application, to ensure that an appropriate remedy has been provided to an applicant. It is common practice now to look at an application and see whether or not that person had sought or even obtained some hearing in another forum. What we urge you to consider and to support with an amendment is to ensure that that inquiry includes a look at the question of whether an appropriate remedy was provided. It's not uncommon for the very issue that is in dispute to be raised elsewhere and for the other tribunal to have deferred handling the matter, saying that they would defer to the human rights process. One must be careful that, even though a person might have been heard—in a grievance process or in a matter before the rental housing tribunal some part of the dispute might have been heard and resolved—the dignity interests might not have been addressed by way of a remedy.

On the matter of substantive fairness regarding tribunal powers, the Association of Human Rights Lawyers urges that Bill 107 provide for an expert tribunal, that members be chosen from among persons who are trained and experienced in human rights matters, and that these members be selected through a competitive and transparent process. On a separate note, from dealing with the competency of tribunal members, the association urges this committee to seek amendments that would require the tribunal to consider all relevant policy documents produced by the commission. We are asking that the

commission remain, that its investigative powers be stepped up for the purpose of systemic discrimination, but also that they continue in their role in crafting policy and assisting by way of research and policy papers to guide all of us in our work in human rights. We are asking, given their expertise and the work they have certainly done over the last 20 years in drafting policy, that these policies be taken quite seriously by the tribunal and that it's not a matter for the tribunal in its discretion to decide whether to aver to the policies but that they be required to—not that they would be bound by it but that they would certainly look to the policy, and if they depart from the policy, they do so in a conscientious manner.

1030

Finally, on the subject of tribunal powers, we are urging that the tribunal be provided with particular powers of inquiry that would assist applicants to ensure that proceedings are not protracted, as well as assist with the production of evidence through compelling particular witnesses to appear before them, compelling the production of documents, and other powers that today are actually quite standard powers at the Ontario Labour Relations Board.

The third area that I would like to address, being the supports for applicants to the tribunal: You've heard already of the need for legal representation and supports by way of advice and information to applicants. I would like to identify three other areas that I consider to be, broadly speaking, matters pertaining to support that Bill 107 can address.

The first is to recognize that Bill 107 provides applicants with the opportunity to have carriage and control over their matters. This act of autonomy is also a matter of dignity, which is not permitted today with the gate-keeping and veto functions provided by the commission.

A second point is that applicant status, who can be an applicant, should be broadened to ensure that third parties can apply to have matters addressed. Right now, applicant status is restricted to persons who are directly affected. Advocacy groups and other service or support organizations are not in a position to file third party complaints or applications to have matters addressed. Unions are not in a position to do so either, although they are generally recognized as a third party, an organized third party, who can, certainly before the labour relations board, function as a party. We are urging this committee to have the government look into and seriously consider expanding the notion of who can be an applicant so that service organizations that have some expertise in supporting vulnerable communities can go forward in their stead.

The fourth point on page 3 deals with the commission's ability to intervene, which we are advocating be added to Bill 107 and that it be an ability to intervene in any and all applications, that that provides yet another opportunity for support for complainants.

Finally, I propose also that should the tribunal be given special inquiry powers, that, too, would serve as a support to complainants and applicants in this process.

Thanks very much for your attention. Mark and I are available, and I believe we have five or more minutes remaining and will entertain your questions.

**The Chair:** Yes, we have a couple of minutes each.

**Mr. Kormos:** Thank you, folks. I appreciate your coming very much.

Ms. Drent, the legislative research officer, in response to one of our queries about civil court wait times, came up with the most recent data, dating back to 1997. The average civil case took three to five years to resolve and cost each litigant \$38,000. That's average, and as we know, the vast majority of civil cases don't go to trial either; they're resolved one way or another—three to five years and an average cost of \$38,000.

The human rights commission, in the time frame 2005-06, disposed of 2,117 cases. The average age of these files was 12.9 months. One hundred and forty-three cases were referred to the tribunal. The average age of these cases was 27.6 months, two years and a quarter. On March 31, 2006, 85 complaints—about 3% of the case load—was over three years old.

You might argue that the triaging that takes place at the onset is overly aggressive, Mr. Hart, but these are the numbers. I know that the civil court system out there may not be comparable directly to the proposal here—although I find some unique similarities—but in terms of the admitted problems in terms of the slowness with which cases travel through the commission, this is the commission's own data. How do we reconcile that with the mythical eight-year-old case? And I know there are some because my constituency office, like you said, deals with them.

**Mr. Hart:** I appreciate the question, actually. It's a good opportunity to address this. I don't know where the statistics on the civil cases come from, but it's apples and oranges.

**Mr. Kormos:** The Attorney General.

**Mr. Hart:** Yes. The apples and oranges that you're comparing here—anybody who has heard the current chair of the tribunal speak about the procedures that are being planned for the new tribunal structure knows that what he's planning is actually a very new and innovative process, in terms of a much more activist and inquisitorial model than the traditional adversarial model that we see in our court systems that in fact is not serving the people of this province very well. What I would expect we'll see in a direct access system, where you've got a reinvigorated tribunal which is pursuing this innovative kind of inquisitorial model, are much-reduced times. Certainly, the chair of the tribunal believes that the one-year time frame for resolving cases at the tribunal is realistic.

With regard to the commission's statistics, they spin them all kinds of different ways. When I look at their statistics when a case goes to investigation, the average length of time is three years. My cases are much longer, I find.

**The Chair:** Thank you very much. Any comment from the government side, Mr. Zimmer?

**Mr. David Zimmer (Willowdale):** I have a thought that has struck me. You used the expression, "You can find your way through this by consulting the experts." You and your colleague are obviously experts. We've heard from presenters before you who were obviously experts who came through the same system, studied the same problems and dealt with the same problems. My reflection here is that presumably you and the folks on the other side of the debate—everybody wants to get to the same place, that is, dealing effectively with these complaints. I ask myself, "How is it that experts with the same background, dealing with the same problems with the same good ambitions in place, can be so different in their approach to the problem?" I know that's a philosophical query, but I'd be interested in your reaction.

**Mr. Hart:** It's a very important question and a very interesting question. There is a fundamental structural and philosophical difference between the two sides of this debate. What I'm encouraging this committee to have consideration of is the fact that these very debates, in terms of different approaches to trying to address these well-documented problems, have been debated before. They were debated in the context of the widespread consultations, both in the Cornish report and the La Forest report. These blue-ribbon task forces, with people who have a tremendous amount of expertise in the areas, considered all of the back and forth and conflicting views and, having considered all of that, came to conclusions which are now embodied in Bill 107.

**The Chair:** Thank you. Mrs. Elliott?

**Mrs. Christine Elliott (Whitby-Ajax):** A brief comment: I'd like to thank you, Mr. Hart and Ms. Grant, for your presentation this morning. Certainly from the three days of travelling hearings that we held during the summer, we're very aware of the wide divergence of views here. Also, the fact that we've been presented with this summary of proposed amendments from the Attorney General this morning—I think we're all at a disadvantage here because we're not really able to comment in detail and to ask you perhaps some more specific questions with respect to your presentation. We'll certainly keep it all in mind as we get the full text of the amendments and we're able to review them in that context. So thank you very much.

1040

**Ms. Grant:** I would like to add one comment—actually, two comments. To respond to Mr. Kormos, the more appropriate comparator, in my view, would be the labour relations board or other quasi-judicial tribunals rather than the civil court system. Those other tribunals require fulsome responses, so you don't get bogged down with the cost and delays of discoveries that are a major impediment in delivering justice in the civil system.

To Mr. Zimmer, I would say that it might seem on the surface that we're of the same background, but indeed we're not. There is a huge divide in the community between those who are practitioners and those who are not.

**The Chair:** Thank you very much.

## ONTARIO HUMAN RIGHTS COMMISSION

**The Chair:** Next is the Ontario Human Rights Commission. Good morning, Ms. Hall. You have 30 minutes. You may begin any time.

**Ms. Barbara Hall:** Thank you. Good morning. I'm here today with Nancy Austin, the executive director of the commission, who may be able to assist me if you ask questions.

I'm pleased to be with you this morning and to bring you the view of the Ontario Human Rights Commission on Bill 107 and its implications for the human rights system in Ontario. I anticipate that over the next few days and weeks, as this morning, you'll hear many considered and informed opinions about the proposed legislation. We've already heard different parties say many different things about this bill. However, I think it's important to remember as we proceed that in many respects we're all on the same side. Each of us who speaks to the committee—every group, every individual—is here because we feel the discussion is of fundamental importance. We're all committed to strong human rights, to building a better system, to promoting and protecting rights more effectively, to bringing the message to everyone.

What disagreements we have relate to how we do it. But I think the differences are not, in fact, that great, and over the past few months we've seen much movement towards a common ground in the discussion about the kinds of amendments that people advocated. The commission applauds that progress. We support the sense of compromise and consensus-building that has resulted in the amendments proposed this morning by the Attorney General. If there's more work done in that same spirit, we're confident that many differences can be addressed and, hopefully, resolved.

We've been working with the Ministry of the Attorney General for some months, recommending changes and amendments to Bill 107. New changes are still being developed. The commission will review them thoroughly and provide you with our formal comments in writing before the end of the hearings.

I hope that we're all agreed that the status quo is not an option. There's important work to be done, and reform is needed to complete that work.

The Ontario Human Rights Code is a fundamental piece of legislation. It provides the framework, a road map upon which our human rights system is based. To be successful, the code must be recognized and accepted as an essential standard on which our society is built. But from time to time, maps need to be updated and revised. As times change, the needs of the people of Ontario change with them. The time has come—is probably past due, in fact—for important changes to our human rights road map.

The commission wants change. A crucial part of our work is identifying and acting on new problems that need attention. For example, our recent work on the Forrester case has helped establish new ways to protect the rights of transsexual people. We've championed the fight

against racial profiling, including the development of a new policy to help guide police services and others.

With a renewed, broad mandate to conduct inquiries, do research and develop enforceable policies, we can continue to have a human rights system that is always moving forward.

From our position, monitoring the system and the people it serves, we're looking for change that will lead us to a better balance. That balance must be between effectively addressing individual claims and proactively creating a culture of human rights.

We are all too aware of the limitations of the existing code and have, many times, called for amendment and improvement. That's why we've welcomed and shared the government's vision of a strengthened commission, based on international principles, more focused on prevention and systemic issues, inside a rebalanced system for enforcing and promoting human rights.

From the time that Bill 107 was first proposed last spring, the commission has taken an active role in the discussion about its merits. We've met with stakeholders outside and inside government.

The commission has carefully considered the potential impact of each section of the proposed legislation, comparing it to what we have now. As I said earlier, we've recommended many improvements to the government.

One that remains outstanding is the commission's capacity to appeal tribunal decisions to the higher courts. In the past such appeals, although rare, have played an important role in advancing human rights through precedent-setting case law.

Many individuals and groups have spoken out passionately about the bill. They have sincere beliefs about what reforms are needed to improve Ontario's human rights system. Sometimes those beliefs have clashed. The result at times has been a difficult and even divisive process.

At the commission, it's often been hard for us to hear criticisms, and sometimes inaccuracies, about our work. However, I believe we've learned from the criticisms and been able to correct some of the public misconceptions. I am happy to say that we've also heard about our strengths and our successes.

Since I began my work here, a year ago this month, I've experienced first-hand what has been recognized nationally and internationally: how effective the commission can be. We're recognized and emulated around the world, not simply because we're one of the first human rights commissions but because of the outstanding quality of our work. Our thanks are due to the talented and committed staff of the commission.

Fear of losing these strengths may be the source of some of the concern and alarm expressed about the bill: the concern that individual complainants might not have what they need going forward; the fear that the good things we do now and are recognized for—the outreach, the systemic inquiries and the policy work—might be lost.

At the commission, we've listened to these legitimate concerns and considered how they might best be ad-

ressed. For us the bottom line is that any change needs to protect vital elements of the human rights system, but also bring progressive change for the better. Given the opportunity, I know the commission and the system can do more and do it better.

#### 1050

So here we are with Bill 107 and its proposed amendments. Is it perfect? Frankly, I don't know of any perfect legislation, but it must create a framework strong enough to build on and move forward to a place we want to go, with the tools, opportunities and resources to do that. Will this bill advance the cause of human rights in Ontario? Overall, we think it can. Clearly, not everyone agrees. However, we do all agree that individual complainants must have their cases dealt with fairly, quickly and effectively, and we believe the system must change to allow that to happen.

We also believe that a human rights system primarily focused on individual complaints, as the current one is, ignores broader issues that cry out for attention. Consider that there are 13 million people in this province, often described as among the most diverse population in the world. We know from polling, from anecdotal stories and even intuitively that many more people experience discrimination than those who make it to the commission—many more than could ever hope to obtain justice in an individual, case-by-case process. So when we're looking for change, we're looking for the infrastructure necessary to address the tough issues, to identify and get rid of barriers to equity, to make our communities healthy and safe, to create that climate of understanding and mutual respect for the dignity and worth of each person spoken of in the preamble of the code and in the international human rights declaration.

The best way to reduce the need for individual complaints is to effect genuine social change. The commission needs to focus its energy on making social change happen if we're going to achieve a culture of human rights. We need to tackle the big, systemic issues through public inquiries, commission-initiated complaints, public education and outreach. We also need to maintain our broad mandate, as set out in the United Nations' Paris Principles.

We must also make sure that we make a smooth transition from an old system to a new framework. While we talk about what change might look like here, the commission is still working on existing complaints and receiving dozens of new ones every week. There will need to be a period of some months when two systems will need to operate side by side. That will be a challenge. We'll also need to find ways to ensure that the skill and knowledge of our staff are not lost to the system. But with adequate resources, we believe the transition can be made smoothly.

We believe the key task is to bring balance to the system so that the system can protect and promote human rights. To do that, we need to be prepared to make big changes; tinkering with the current system is not enough. We need to make sure the money is there to do the job

right; balance depends on that. We have an historic opportunity right now. If we don't take it, I fear it will slip by and may not come around again for years.

This opportunity could help us change focus in important ways. Our annual report this past year reminds us that issues such as racism, Islamophobia, homophobia, harassment and violence toward women, and barriers faced by people with disabilities continue to loom large in our communities. A recent survey indicated that age discrimination is on the rise. Relieved of individual complaints, the commission could expand its ability to address these issues in a strategic, systemic way. We could take the lessons learned, for example, in the restaurant initiative and apply them proactively in many other sectors.

The commission could also put more of its energy into addressing fundamental areas of human rights where the United Nations is currently focusing its international attention: economic, social and cultural rights, such as the right to housing.

We need to find new ways to involve the community in the work of the commission, and the commission in the work of the community. Such partnerships are essential as we move towards creating a culture of human rights.

If this bill is passed, the commission will work hard with all the individuals and organizations, for and against, to make this a reality.

The new legislation will need to be carefully monitored and reviewed. There may be unforeseen problems that will have to be addressed promptly. We'll do that.

The bottom line is that we can make reform work to meet the needs of Ontarians and ensure our position as a leader in human rights, in Canada and abroad. It's important work that's urgently needed. Together, I believe we can make it happen. Thank you.

**Mr. Kormos:** On a point of order, Mr. Chair: We're down to about three of the five government members. Perhaps a five-minute recess would be appropriate so that Mr. Orazietti and Mr. Berardinetti can hear what Ms. Hall has to say in response to questions. Mr. Orazietti left the minute Ms. Hall started. I don't know if they have a history, but—

**The Chair:** Mr. Kormos, it's not a point of order. We'll go to the government side, if you have any questions or comments?

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you for your presentation. I found it very interesting. On the third page of your presentation you talk about the capacity to do appeal. Could you expand a little further on that?

**Ms. Hall:** Yes. One of the current functions of the commission, and something that would continue, is the development of policy. Our policy is important, not just as something that is applied in the hearings at the commission, as well as at the tribunal, but also in changing behaviour.

For example, when we developed a policy on accommodation for people with disabilities, that policy formed

a major part of our public education function. We met with major employers across the province, with human resource organizations, and told them how the commission interpreted that duty to accommodate, and those employers made changes in the way they responded to the needs of their employees. Human resource professionals went out to their clients and said that these are changes that promote the integration of people with disabilities or people requiring other kinds of accommodation into the society and the workplace. We're only effective with that if our policy is applied at the tribunal.

At present, in the vast majority of cases, when we put forward our policy, the tribunal, in its decisions, applies that. In areas where there's a disagreement, we believe it's essential that there be another level to determine who's right in that case. If our policy is wrong, we need to be told that. If it's right, then the tribunal needs to consider it in making its decisions. Because of that, without requiring complaints to be laid, in many cases change will be made in our society based on that policy. If it were to go to the tribunal and not be applied and there were no mechanism to respond to that difference, we believe that many people would ignore it. They'd take their chances. So a lot of the proactive work we do requires that our policy is seen as sound and what will be applied in the complaint process and as people wanting to avoid complaints make the change.

1100

**Mrs. Elliott:** Thank you very much, Ms. Hall, for appearing before the committee today. Your insight is really invaluable to us as we move forward with this. I just have one question, and it reflects the concerns of some of the presenters both during the summer hearings as well as the first presenters this morning about the separation of the commission from the individual complaints as they come forward, because systemic issues don't normally walk through the door. Even with the amendments that I see the Attorney General has put forward, I understand that the commission can initiate investigations into systemic complaints. I'm wondering how they'll even know about them under the new system.

**Ms. Hall:** We see that it is important to talk about a system. You can have systems where there are pieces that function as silos or in an integrated way, and we see it as necessary that this system will operate in an integrated way. We see, for example, having a memorandum of understanding with the tribunal that will set out in it many ways that we will work co-operatively together. We believe it's important that we be able to see the cases as they come in. We know that often, when individual complaints come forward, if there's a systemic component to them, we've already heard about that issue, and we know that particular cases with particular circumstances have systemic components. We've been told by Michael Gottheil, chair of the tribunal, that he would see in his rules the ability of the tribunal to also, in places where they've identified a systemic issue, invite the commission to intervene. It would be up to us whether or not we did that.

But I think one of the challenges of the current system is that we have identified systemic issues primarily based on what has come before us as individual complaints, and we have tended to focus on what's come in the door as opposed to working more closely with communities out there to identify what the systemic issues are and how they can be strategically proceeded with or addressed. Our priorities, in a sense, are set by what comes in the door, and I believe that there are many situations where we miss issues because communities are not connected to the process, are not aware of those rights, do not believe that there's a way of addressing them. As I said in my comments, we need to go out and work more closely with communities and set our priorities through that relationship.

**Mr. Kormos:** Thank you very much for coming. When I was younger, at weddings they used to ask you whether you were with the bride or the groom, and they'd seat you on one side or the other. They should have asked folks, "Are you for or agin?" so that we'd have the applause being more focused from one side of the room or the other side of the room here today.

Look, this is a very controversial issue and there are no two ways about it. There are two things I'm interested in. I have regard for what you have to say about this, along with a whole lot of other things. On page 4 you talk about, "Will this bill advance the cause of human rights in Ontario? Overall, we think it can." With respect, who is "we"? Exactly whom are you speaking for when you say, "We think it can"?

**Ms. Hall:** The Ontario Human Rights Commission.

**Mr. Kormos:** To wit—

**Ms. Hall:** The 14 commissioners who are the Ontario Human Rights Commission.

**Mr. Kormos:** I trust, then, that there's unanimity in that respect?

**Ms. Hall:** The commission's position is that we can.

**Mr. Kormos:** I trust, then, though, that there's unanimity in that regard.

**Ms. Hall:** The commission's position—our goal is to have a shared position, a consensus position.

**Mr. Kormos:** Okay; fair enough. On page 3 you talk about what appears to be your recommendation that the government incorporate the right to appeal into Bill 107, and if I'm correct in that inference, you and I have some common ground. There's been criticism of advocates for the right to appeal. There's been support by those same people who support Bill 107 of the omission of the right to appeal. Help us understand why the right to appeal is a valid and important inclusion in any system, whether it's the Bill 107 system or the system that retains a stronger, proactive commission role.

**Ms. Hall:** I know there are arguments that apply quite broadly in administrative law that the goal is to have an experienced tribunal, who are the best to make the decisions, and going to the courts doesn't necessarily give one that same level of expertise. I think when we're talking about human rights, we're talking about quasi-constitutional rights, and in order for us to be effective in

areas like the use of our policy, the application of our policy, we need to have another body, a senior body, address disagreements that occur. There are concerns raised that too often appeals are used by respondents to delay the final resolution of issues, but we believe that it's important to have that opportunity to resolve what may appear to the world to be differences between commission policy and tribunal decisions.

**Mr. Kormos:** Fair enough. Mr. Hart suggested that the commission spins its data. Were you here when he said that? I'm hard-pressed to believe that. Are you?

**Ms. Hall:** We take our role seriously. I talked about the fact that there have been some criticisms that have been hard to take. I think there have been other criticisms that have been easy to ignore.

**Mr. Kormos:** So Mr. Hart is a little off base on that one?

**Ms. Hall:** I think that what appears on our annual report and any of the material we put out is based on an un-spun version of the facts.

**Mr. Kormos:** Thank you, Ms. Hall. I appreciate your coming here today.

**The Chair:** Thank you, Ms. Hall.

1110

#### RAJ ANAND

**The Chair:** Next we have Raj Anand. He's a former chief commissioner and tribunal member. Good morning. You have 30 minutes.

**Mr. Raj Anand:** I understand that a motion was passed, I believe on August 9, calling on former chief commissioners to come before this committee, and I'm pleased to do so and to provide whatever assistance I can.

I was hoping that my successor, Catherine Frazee, would be able to share my time this morning. She was planning to do so but was unfortunately unable to come today because of the death of a close friend. I understand that she will be appearing later on.

The 1962 Human Rights Code was based on a 1947 New York state model, which has been replicated across Canada—in most of the 10 provinces, the three territories and the federal jurisdiction—throughout the 1960s, 1970s, 1980s and even into the 1990s. That 1947 model is based on an outmoded concept of discrimination and a rudimentary administrative law structure. The result is that despite the dedicated and hard-working staff and commissioners, and of course the current chief commissioner, Barbara Hall, it is a model which has outlived its usefulness, and I can say it outlived it long before I became chief commissioner in 1988.

I have to say that in my home office, I have a plaque on the wall which was from 1988, celebrating the 40th anniversary of the Universal Declaration of Human Rights, and it's signed by the Premier and the minister and myself. Unfortunately, it is a piece of paper that I think symbolizes the wide human rights protections we treasure and are proud of as Canadians that exist in our

law but are effectively unenforceable before human rights commissions, today and for some time.

The Ontario commission, in my respectful view, had ceased to be effective before the time that I was there. It was ineffective before, during and after my tenure as chief commissioner because the structure in place was ineffective. I campaigned and lobbied and secured a 50% increase in its budget, but that didn't serve the purpose, because I and other chief commissioners were limited by the existing legislation. In my case, I know I tried to improve enforcement capacity and promotion of equality through various administrative and organizational reforms, but the legislation, then and now, was an obstacle.

Since that time, I've practised before the commission, I've represented the Ontario and federal commissions, I've sat on a tribunal hearing cases brought by the commission, I've tried to teach some of these concepts of creating tribunals and shaping administrative practices to master's students, but more than anything else, I've represented complainants and respondents in human rights cases before human rights commissions, before labour arbitration boards, before the courts.

When I say complainants, I'm speaking of individual complainants who have suffered sexual harassment, racism, the refusal to accommodate disability or their religious beliefs, homophobia, age discrimination and so on.

I've also represented a number of organizations which are at the grassroots of these issues, such as CERA; MARC, the Minority Advocacy and Rights Council, which I chair; NAPO, the National Anti-Poverty Organization; OCAP; the Foundation for Equal Families; the Native Women's Association; many legal clinics and South Asian organizations.

I also want to note that I represent and have represented respondents—employers, housing providers such as co-ops and non-profits, sports organizations, hospitals, universities and so on—and I hope I can bring that perspective as well.

I've tried to work in the areas of access to justice through organizations such as Pro Bono Law Ontario, the late and lamented court challenges program, of which I was a panel member until a month ago, and the equity advisory group. I tell you this not to give you my CV but so that you can assess—and I would ask you to assess—the positions of those who favour the retention of the gatekeeper.

When you have witnesses before you, I recommend that you ask what their actual experience has been of litigation before the Human Rights Commission or a tribunal. I say that you need to ask these hard-working and well-meaning advocates, do they take complaints before the Human Rights Commission or do they, as I do, spend a lot of time advising people on how not to go to the Human Rights Commission but to find other processes and remedies which are more effective? It's because of that that we've had a plethora of other statutes and organizations created. The Pay Equity Commission, the application of disability rules at the Workplace Safety and Insurance Board and tribunal, internal human rights

processes, collective bargaining, human rights processes—all of these have been designed to take over where the commission structure, in my respectful view, has failed.

I suggest when you hear from those who say that the solution is not to reform the system but to throw money at it, or who say that human rights officers provide support to complainants so don't take that away, in fact the reality is that by law they provide nothing of the sort. Their first disclaimer to the parties, and it's a legitimate one, is that they represent no one. They are neutral investigators. They therefore, as Mr. Hart said earlier, have conflicting roles from the outset.

Or those who say that direct access is wrong because complainants need representation—the fact is that complainants get public representation at no stage of the 44-year-old process in Ontario. None. At the tribunal, for those 5% who get to the tribunal, the public representation is provided by the commission, which often takes a different position from the complainant, and the complainant is left to hire counsel, to seek legal aid or in some other way to obtain legal representation. Indeed, in some cases—and I was involved in one fairly recently—the prime opponent of the complainant is the commission. That was true in a constitutional case that I was involved in, in which the commission took the position that it had no jurisdiction and the complainant had to take this up to the Court of Appeal—unsuccessfully, I might add—but the commission was, at all points, on the opposite side of the complainant. So there's no public representation of complainants under the present system and there never has been.

There are those who say that the gatekeeper function of the commission should be retained. The result of that is that the entire decision-making function has to be done at least twice before getting to a decision on whether there was discrimination. That's our present system and that, from a standpoint of public administration, which in my respectful view should concern you, duplicates the cost and duplicates the time. It's not solved, as some have recommended recently, by adding layers of appeal to the paper hearing at which commissioners spend something like seven minutes per application before them at the meeting in deciding whether the matter should go on to a tribunal or not.

Finally, you have to ask those who say that the enormous delays can be reduced under the current system—let me make no mistake about this. Delay is the single most debilitating factor of human rights enforcement in this country. It renders the human rights enforcement process ineffective in and of itself. It results in complainants giving up their cases and making settlements for virtually nothing. It results in respondents throwing a little money, relatively for them, at a complainant in order to be done with the process rather than spending a whole lot more on lawyers. So in terms of access to justice, it denies access to both sides.

1120

As we know, the fundamental structural difficulties in the Human Rights Commission process across the

country have been revealed by any number of studies and commissions, including, as you've heard, the very capable and expert inquiries by Mary Cornish and by the panel chaired by former Justice La Forest, as well as repeated reports of the international Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee.

There is no right to a hearing under the current statute. Ninety-five per cent of complaints are screened out, abandoned or settled, with no decision on whether discrimination occurred. One might ask, if you told the landlords of this province that an application to the Rental Housing Tribunal for nonpayment of rent would be subject to an investigation and a discretionary decision on the part of the Rental Housing Tribunal on whether, in its discretion, it chose to allow a hearing of whether a tenant should be permitted not to pay rent, I fancy to say that you'd have landlords marching in the streets. Instead, we have quasi-constitutional rights that are subject to that discretion and it's virtually unreviewable by the courts.

Again, I ask you to consider that as you hear those who criticize the absence of an appeal right in Bill 107, something which the chief commissioner addressed and which I'm happy to speak to as well in greater detail.

At the La Forest task force, that blue-ribbon panel found virtual unanimity across the country that the system was broken, and not just underfunded but broken. They asked me to draft sort of a detailed blueprint on what should replace it. What I recommended was what I called a modified labour board model. This addresses to some extent Mr. Kormos's question earlier about the appropriate comparator: the courts versus another administrative tribunal. I say "modified" because the labour board model is essentially one in which you file a case and you get an adjudication. You don't necessarily get an oral hearing. There are a variety of innovative possible structures in terms of how the case is heard, but you get a binding adjudication on the merits, which you don't get in 95% of the cases currently—modified because you're not dealing with two relatively equal parties in trade unions and employers as you are at the labour board; you're dealing with vulnerable, disadvantaged groups by definition if they have a valid human rights complaint.

Therefore, there has to be publicly funded legal representation for complainants. That was essentially the model that I recommended. It was essentially adopted by the task force, creating essentially three branches, the commission being left to the work it does the best—the policy and research and public education work—as well as the right to take over or intervene in any individual human rights complaint. That, as I understand the Attorney General's proposed amendment that was announced to you today, is what is being substituted for the former systemic restriction which Ms. Elliott was asking about earlier. As I understand the proposed amendment, the commission will be permitted to file an application at any time where it views that application as being in the public interest. So it could include individual as well as what we

call systemic complaints. As I understand it, the systemic definition, which is problematic, is not going to be part of that because it would only feed litigation over definitions.

The essential element is the right of the Human Rights Commission, as a public advocate, to intervene or to initiate complaints. I commend the Attorney General for having clarified and added that. I see that, quite frankly, as a victory and a recognition of the valid criticisms that have been put forward during consideration of this bill by what some would regard as opponents but I certainly regard as those who want to contribute to a better process.

The other aspect is a mandatory legal support centre. Again, as I understand the announcement this morning, that is going to be enshrined in legislation. It's important that that legal support centre be independent of government, of the commission and of the tribunal, and that it be properly funded. I commend the proposed amendments that make this mandatory, because direct access, and I would be the first to say this, falls to the ground without proper legal advice and representation. What you get is the BC model or, indeed, the present Human Rights Code, neither of which provides this essential representation function.

There must be a role for the Human Rights Commission as a publicly funded advocate, not as a gatekeeper to prevent access but rather as an advocate to do the difficult and proactive public policy work that Chief Commissioner Hall was speaking of, which is vitally important to avoid complaints; to change practices not through the labour-intensive, costly process of complaints, but rather to do it in a more substantive, proactive way; to advise the labour federations, the manufacturers' associations, the housing associations and so on as to what the proper practices should be and get them to make proactive change rather than waiting for an ex post facto complaint.

The tribunal, under this legislation and under its rules, must have the tools to run both fair and expeditious hearings—expeditious for the reasons I gave earlier in terms of delay being the single most debilitating factor. Fair is obvious: It has to be fair to both sides. That doesn't mean one-size-fits-all, in terms of an oral hearing going on for three weeks with interminable witnesses for every case. The tribunal, like any modern administrative tribunal, has to be given the tools—and I understand the legislation gives it those tools—to adopt practices which are suited to the complaint in question. So some cases will get a summary dismissal. Some cases will require further inquiry akin to discovery. Other cases can go to an oral hearing. It will depend on, for example, who's behind the complaint, whether it's a legal support centre, a legal clinic, an advocacy organization, a lawyer. Make no mistake of it: Lawyers in the private bar, I expect, will have a small role to play under this new structure, contrary to some of the criticisms that have been levelled at it. Certainly, that's what I anticipate.

The tribunal needs to be able to tailor the adjudication process to the nature of the complaint. It's undoubted that

frivolous complaints don't deserve the same expenditure of resources as cases involving a broad public interest issue. There are many interests at stake, and they need to be balanced.

Again, like many others, I would say that the legislation is not perfect. It can be improved through clause-by-clause, and perhaps even in the future. The essential elements are in line with international and domestic obligations and are the right ones, in my view. Persons protected by or subject to the human rights system deserve an enforcement system that is more than the piece of paper I have on my wall. So I urge you to pass this bill into law after due consideration of possible amendments.

1130

**The Chair:** Thank you very much. You have about four minutes each. We'll begin with the government side.

**Mr. McMeekin:** Thanks very much for your presentation. I was particularly impressed with your repetition of the concern about the appeal mechanism. I think, personally, that that's one of the weaknesses I've seen in the legislation. Some of the amendments that have been brought forward by the Attorney General today and the words of many of the presenters, including the commission itself and its chairperson—you're reinforcing that, given the propensity to have all these sidebar deals cut that are really not in the interest of true justice in the longer term, we really need to ensure that that appeal mechanism's there. Is that correct?

**Mr. Anand:** I'm not sure about that. I don't take a strong view on that, because I think it's a tough issue, quite frankly. I think there are strong arguments on both sides. There's the traditional administrative-law argument, which is when the courts should maintain a position of deference to administrative tribunals. The landscape may have changed somewhat this morning in the sense that in the proposed amendments I note that there will be specific requirements of experience, expertise, interest in and sensitivity to human rights as well as representativeness of the diversity of Ontario's population. That changes the calculus to some extent. The choice is, really: Do you want these decisions to be made by, let's call it, an expert tribunal with particular sensitivity and knowledge of human rights issues or do you want them to be made by generalist judges who have no necessary expertise in these areas? That's point number one.

Point number two is that the appeal right, by and large, has been exercised by respondents and not by complainants or by the commission to the divisional court in this province. That's their right—I'm not criticizing that in any way—but one has to take that into account, in keeping with what I said a moment ago in terms of the prevailing stances, to the extent that there are any, of the courts versus tribunals.

There's a reason why you don't simply have a right of civil action for human rights in the courts. That's what you have in the United States. The EEOC has a six-month period in which it can try to deal with the case and

determine it. Either way, they don't have a gatekeeping function and the case goes on to the courts. But it's a civil action, a jury trial, it has all the costs and so on and it's put in front of generalist judges. So I think there are strong arguments in favour of restricting judicial review by way of the path of the "patent unreasonableness" standard.

**Mr. McMeekin:** I appreciate that clarification.

**Mrs. Elliott:** Thank you very much, Mr. Anand, for appearing before the committee this morning.

My only question relates to the rules of procedure that are to be adopted by the tribunal, which may have changed again somewhat with the amendments that have been proposed by the Attorney General. Once we get into the text of it, I guess we'll really know. But just on the face of it, it would appear to me that it would still be more or less the status quo in the sense that the Statutory Powers Procedure Act may still not be required to apply to the rules of the tribunal.

Do you have any views on why that should be so? I'm presuming that you would agree that they shouldn't need to apply. That has certainly been a concern that's been expressed to our committee, that those basic rules of natural justice should apply. I'd appreciate your comments on that.

**Mr. Anand:** I think that generally the rules under the SPPA should apply. It's difficult to answer the question in the abstract without looking at a particular rule and its particular equivalent in the SPPA, but I think the principle is clear—and, indeed, it's clearer now than it was yesterday—that the concern that has been validly expressed that complainants would see their cases disappear, in the sense of being dismissed, without reasons and without visible face-to-face adjudication of some kind has been drastically reduced, I would suggest, under this, and it should be. The tribunal has to have the power, in the interests of the public and in the interests of the parties before it, to look at a case as filed and say that it's outside the jurisdiction; for example, it should go to the federal commission and it need not go through an oral hearing for that purpose. It's the kinds of tools that the labour board has in those cases, but I think that it should be subject to an overriding requirement that the process be fair and expeditious in the circumstances. That will limit the circumstances in which an oral hearing is not required, and I think that's the way it should be.

**Mrs. Elliott:** Just one quick follow-up: Would you be in favour of removing the provision in the act that says that the SPPA does not apply to these proceedings?

**Mr. Anand:** In general, I would be, but I would have to see exactly what the rules say before being able to say that clearly.

**Mrs. Elliott:** Thank you very much.

**Mr. Kormos:** Mr. Anand, you know, I hope, that I am a fan of yours, because I have counted on your counsel and relied upon it any number of times.

In your comment about the funding proposal, I was here, as you were, with the Attorney General, who conjured up visions of offices of the worker adviser or legal

aid clinics across the province that are hard-pressed to deliver the modest amount of services that they're mandated to do.

We were up in Thunder Bay and we had a presentation by the aboriginal legal aid clinic—I hope I haven't mis-titled it. This small legal aid clinic is responsible for the two ridings of Kenora—Rainy River and Timmins—James Bay—Howie Hampton's and Gilles Bisson's—which cover the whole border from Manitoba to the Hudson's Bay to James Bay's coast. They're saying that Human Rights Code access was a big issue. That remains to be seen.

**Mr. Anand:** This can't be a Toronto-centric model. It has to be regionalized as well.

**Mr. Kormos:** Yes, thank you—and pretty highly regionalized, huh?

**Mr. Anand:** I would expect so.

**Mr. Kormos:** You talk about the labour board, and that's fair enough. I have this problem in terms of understanding the parallel, because the labour board deals with a contractual relationship, primarily. There's a public interest being expressed between workers and their bosses. What about the distinction between human rights advocacy in the public interest, as, for instance, Criminal Code prosecutions are conducted in the public interest—it's in the public interest to suppress crime—versus these private relationships, like worker-boss relationships, notwithstanding that there's a public interest prevailing; similarly in landlord-tenant tribunals—and I appreciate the expertise element of tribunal. There are some of us who see the role of the commission as very significant in terms of prosecuting, if you will—

*Interruption.*

**Mr. Kormos:** Somebody's BlackBerry keeps going off, and that's what causes that damned disruption.

How about that distinction, because that takes us into this whole Bhadauria decision, yet the legislation incorporates human rights violations into civil actions if you can tie it into something else. It's the bastard child or offspring, if you will, of the marriage between Bhadauria and the American model. Respond to those for us.

**Mr. Anand:** You've asked a lot of questions. I'll try to answer them. First of all, you're right that there's a distinction between the labour board model and the human rights system. That's why I called it a modified labour board model. Without the public interest element in the form of a legal support centre to advise, assist and represent complainants in the human rights process, I say that the system falls to the ground, and it falls to the ground for exactly the reason that you've indicated: that there's less of a public interest. There's obviously a public interest in facilitating collective bargaining; the Labour Relations Act says that. But there isn't the same public interest in every case, with the result that if the labour board gets a consent from a union and an employer, it signs it on one line and that's the end of the case. It never really looks at it again. Indeed, I had this situation when I was chief commissioner, where the same case was essentially filed before the labour board and the

Human Rights Commission. The labour board said, "Yes, sir," to it because that's the way it does its business. It's not an advisory tribunal. But there was still a human rights complaint, to which we said, "No, sir," because there was a public interest in the case going on and we were not going to sign the settlement.

**1140**

So I agree with you that there is a distinction. That's why, as I say, there are at least two modifications to that, as I see it, in this legislation. One is mandatory legal support and the second is the role of the Human Rights Commission. I agree with you that the Human Rights Commission should have a role in certain cases where it wants to take on that role, and that, frankly, is what I recommended to La Forest as well. It was a stronger role for the commission, in the sense that the commission would be allowed to take over a case in that situation but could not be the gatekeeper. Under this legislation it can't be the gatekeeper, but it can initiate, under the amendments proposed today, any complaint where it views it as being in the public interest.

The final point with respect to Bhadauria: Again, that's a difficult problem of public administration. Right now, you can file a human rights complaint and file a civil action in the courts over the same dismissal, and the jurisprudence is that they both go forward. Well, that's two-stop shopping, it's duplicative, it's costly and respondents resent it. On the other hand, a complainant may get different remedies before the two different bodies, and so it's important to try to marry that in some way that's feasible.

**Mr. Kormos:** Thank you, sir.

**The Chair:** Thank you, Mr. Anand.

#### CARP

**The Chair:** The next presentation is from CARP: Mr. Bill Gleberzon. Good morning, sir.

**Mr. Bill Gleberzon:** Good morning.

**The Chair:** You have 30 minutes. You may begin.

**Mr. Gleberzon:** I think that my presentation may take a somewhat different slant than that of the previous speaker. But before I begin, I'd like to tell the committee something about who we are. We represent 400,000 members across the country, 250,000 in Ontario, who are 50 years and older, retired or still working. We're a non-profit national organization that does not receive operating funds from any level of government. Our mandate is to promote and protect the rights and quality of life for mature Canadians and Ontarians. Our mission is to provide practical recommendations for the issues we raise. CARP's magazine has close to a million readers, and our websites are accessed by 350,000 unique visits per month.

I'll say that this was written before the announcements were made, so we'll make allowances for that. The addendum that's been handed out addresses the announcements that were just made.

While there seems to be a consensus that reform of the Human Rights Commission process is necessary, CARP opposes the proposed total revamping of the Human Rights Commission as outlined in Bill 107 for a number of reasons. The bill goes too far in trying to correct flaws that have been identified with the current commission, such as the time it takes to resolve cases. However, issues such as these can be rectified by amending existing regulations and procedures without the major overhaul proposed in the new bill.

It is likely that the legislation will not eliminate or reduce the chronic backlog of human rights cases. Rather, it will shuffle the lineup from the commission to the tribunal without setting enforceable deadlines to ensure that cases are heard and decided within a reasonable time. In fact, the gatekeeping function—that is, to ascertain if “the proceeding is frivolous, vexatious or is commenced in bad faith”—that has bogged down an expeditious resolution of cases before the commission will now have to be undertaken by the tribunal, so nothing’s been resolved at all in that regard. In fact, because cases are still before the commission at the time of transference of responsibilities to the tribunal, the time lag will be increased as both old and new cases will simultaneously be before the tribunal. This will necessitate that the tribunal hire additional staff to dispose of the extra workload, I would assume, unless they’re just going to let it pile up, which I assume they won’t want to do. The legislation may force hundreds of current discrimination cases to start all over again in the new system without the benefit of continuity.

By splitting the commission and the tribunal, the roles of each will be undermined because the current integrated process will be replaced by silos. And by creating an anti-racism secretariat and a disability rights secretariat, the commission will be subjected to further silos. It seems to us that the government should be moving in the opposite direction: You integrate silos wherever possible rather than create them. As well, the appearance will be created that the areas represented by these two secretariats are the primary foci of the revised commission. In fact, it’s our understanding that the African Canadian Legal Clinic opposes the anti-racism secretariat and that ARCH opposes the disability rights secretariat.

Bill 107 is based on the assumption that the heads of the commission and the tribunal will automatically collaborate. Although the current heads appear to be eager to do this, there’s no guarantee that their successors will follow suit. Systems have to be built on legislation, not on the goodwill of particular individuals.

Human rights protection in Ontario will be weakened if the blending of investigation and prosecution of both systemic and individual cases does not continue. The tribunal will only deal with individual cases, and therefore systemic investigation and prosecution will suffer and permit the continuation of systemic discrimination. Of course, that’s been changed with the new amendment, because the commission will be able to undertake investigation and prosecution of systemic discrimination. But the fundamental principle doesn’t change. It’s a kind

of papering over, making a smiley face out of a bad situation. While the commission can make representations regarding cases of systemic discrimination to the tribunal, Bill 107 places the latter organization under no obligations to permit the commission’s intervention. And I gather that the new amendments do not change that restriction.

The present cost-free legal representation is not protected in the legislation and could be replaced with fees. The legislation only vaguely refers to the possibility of legal assistance, in 46.1(1). Although the minister has stated that free legal assistance will be available without means testing, this verbal promise is not ensured in the legislation, and, as I’ll point out, we believe the amendment does not ensure it either. Otherwise, the major beneficiaries of Bill 107 could be the legal community—I know the previous speaker has said that he doesn’t believe that would be the case, but we do—and probably the province because the cost to the consumer could limit the number of cases before the tribunal since many Ontarians would be unable to pay legal fees.

The legislation permits the Human Rights Tribunal to charge user fees, which is unacceptable in principle. Moreover, according to the legislation, human rights complainants may have to pay their opponents’ legal costs if they lose. Right now, the tribunal can order the Human Rights Commission to pay the legal costs of the party accused of discrimination if the complainant loses.

#### 1150

The current right to appeal decisions of the tribunal will be eliminated, and judicial review of a decision will be seriously restricted to the difficult test of demonstrating that the decision is patently unreasonable. You heard from the previous speaker, and we heard from others, that judges do not necessarily have the training to deal with appeals of human rights cases. When you get down to it, a lot of judges don’t have the necessary skills in a lot of the cases they hear, so it’s a non-issue when you get down to it. That’s why they take time in making their decisions, so they can bone up on what they don’t know.

The changes to the Ontario human rights system proposed in Bill 107 are unique, as far as we know, and there’s no evidence or precedent to demonstrate that the division between the commission and the tribunal will produce more effective and efficient human rights protection for Ontarians.

The commission has served as the defender of the public interest. This role will be severely weakened as a result of the proposed legislation. Indeed, there is no one on the tribunal to assume this role, because they believe that to do so would bias them. We heard that from the chair of the tribunal. Therefore, it is essential for the commission to be directly engaged in individual human rights cases in order to provide depth in their reports, public education and advocacy regarding systemic violations and protection. Individual and systemic cases go together. That’s how you learn that cases are systemic, because you’ve investigated the cases of a number of individuals.

An example of the importance of the crossover of roles is the commission's outstanding document *Time for Action*. To remind the committee, I brought a copy of that document, which is outstanding. It serves as a model to fight ageism—and I'm just talking about the ageism part of it in this regard—across Canada. In fact, *Time for Action* had a major influence on the abolition of mandatory retirement in Ontario. So that's the result of blending individual and systemic approaches to human rights investigation and trials.

Indeed, the Human Rights Commission itself has played a leading role as a model for other provinces and, I understand, for other countries as well. This role will be jeopardized by the proposed legislation.

The results of British Columbia's tampering with its human rights commission shows that ill-conceived changes can undermine the protection of human rights, which is exactly what has occurred in BC.

In conclusion, CARP recommends that Bill 107 should be withdrawn entirely and sent back to the drawing board. This review should include broad consultations across the province to maximize participation rather than consultation only with selected individuals.

I'd now just like to make some comments on the proposed amendments to Bill 107, which we found out about in today's *Toronto Star*. Apparently, the minister is pledging a human rights legal support centre, where needed. We don't know what that means. Based on what criteria? Will it be income tested? Because while it's true we want to make sure that poorer complainants have the right to appear before the Human Rights Tribunal, why should that not apply to those who do have money? Why should they pay to defend their human rights? We therefore find this all very vague.

The second amendment talked about limiting the tribunal's power to dismiss a case as frivolous without first holding a hearing. Well, the only way they're going to do that is by lengthening the process of investigation, which is, as we understand, what caused the introduction of this legislation in the first place. This bill won't solve that problem, which, as I say, we understand was at the core of the legislation in the first place.

The third, we understand, was to give the commission investigative and enforcement powers to pursue cases of systemic discrimination, and will stipulate that the commission's report goes to the Legislature. This is moving in the right direction, especially in regard to its reporting structure, but also, I should add, in regard to allowing it to investigate and enforce these kind of cases. As I said, without blending individual and systemic cases, we won't get the kind of strength and depth that is needed in understanding what is going on across the province. But this reporting structure should apply to the tribunal as well, or the gulf between the two silos will be widened even more. Similarly, the split between the two silos will be accentuated by differentiating the areas for investigation and enforcement.

CARP advises this committee and the Attorney General to talk with the commission staff, if it follows our advice about withdrawing the bill, because who else

knows better what solutions are needed to make the commission more effective and efficient? I can talk only of my own personal experience in a variety of management positions, in which I found the only way to find out what's going on and what should be done is by talking to the staff who deal with the issues on a daily basis.

**The Chair:** Thank you. We'll begin with Mrs. Elliott.

**Mrs. Elliott:** Thank you very much for your presentation. It was succinct, concise, and I think really identified the major issues that are outstanding with respect to Bill 107. Again, until we've all had a chance to review the amendments in depth, we're not really going to know whether all of your questions have been answered.

My concern, as is yours, is with respect to the operation of the systemic investigation of complaints versus the individual investigation of complaints, that there really need to be some communication supports, reporting supports, something built into the legislation to make sure that that communication does happen, because I think that's key if the commission is to have value for investigating systemic complaints. So I certainly agree with you in that respect. I guess we'll have to look forward to what's actually in the amendments to see how they deal with it.

**Mr. Kormos:** Thank you very much, Mr. Gleberzon. The members of CARP are well served by their organization. You are one of the most effective advocacy groups and one of the most effective lobbyists for the greying members of our society, which includes more than a couple of people in this room; I'm talking about here at this table.

You raise some very interesting points. I sat here through Mr. Bryant's comments this morning and read his briefing note, and I don't take a whole lot of comfort. There may not be a means test in the provision of these services, but—I don't know if you're familiar with the Office of the Worker Adviser here in the province of Ontario. They advocate for workers in front of the WSIB, and their backlogs are two and three years. The backlog is created at that level of intake. So there may well not be a means test because what that means is that people with means don't have to use the advocate that the Attorney General claims will be provided. They don't have to wait two and three years for their case to be processed through the stage of the human rights legal support centre. So people who've got the cash can go to the head of the line. Down where I come from, we call that a two-tier justice system. It doesn't seem fair at all.

You are also the first person here in Toronto during these committee hearings who has raised an element of the bill that is not going to get the attention that it should, although, having raised it today, you may well provoke more interest. Burying an anti-racism secretariat and a disability rights secretariat in the commission, rather than having these as stand-alone bodies with their own funding and their own mandates, I think—and I agree with you—is a slight to all Ontarians, because all Ontarians have an interest in fighting racism and advocating for the disabled.

1200

The issue of cost: When you privatize the system, when you turn it into a litigious system where there's direct access, of course you have to have costs, because respondents will argue, "If I'm being prosecuted and the claimant is unsuccessful, why should I have to bear my own legal costs?" Once again, as some of us in this room know, when you go into a lawyer's office, Mrs. Elliott, and you talk about wanting to litigate against somebody, one of the first things the lawyer has to do is caution that person that even though they may have a pretty good claim, if they lose, they're going to have the CIBC daylight kicked out of them in terms of having to pay costs. That's a real barrier. Isn't that strange, a commission that has contained within it a disability rights secretariat building this kind of barrier to people seeking redress for discrimination, or for victims of discrimination to be told, "You've got to be careful, because if you proceed with this and should you lose"—because we know, Mr. Zimme, —don't we, that one of the other things lawyers have to tell their clients is, "No matter how good you think your case is, there's always a chance of losing. If you lose, you could have to pay costs?"

You've raised some very significant issues and I truly appreciate your participation in this process.

**The Chair:** Thank you, Mr. Kormos. The government side.

**Mr. McMeekin:** Hi, Bill. How are you? You and I have fought a lot of battles together, including the battle against ageism and the move away from mandatory retirement, so I know first-hand some of the abilities that you and CARP bring to the table, and interestingly the seniors' secretariat, which you've been very active in.

I was intrigued by your comments about silos. Frankly, I'm easy about it as long as it gets done. I just would make that observation. But as usual, your comments are helpful, particularly your reference to legal assistance for Ontarians, some clarification of that, and the fact that there's no requirement that the commission limit itself to systematic discrimination issues. I appreciate that as well.

Let me focus in, then, on your suggestion about the silos, because we've had some discussion about that, whether that's the right way to go or not. There is a belief in some quarters that when you set up a secretariat, be it a secretariat to deal with a co-operative as an economic development tool, which I will be presenting a private member's bill on down the road, a seniors' secretariat, a racism secretariat or whatever—can you comment about your reference to silos, and if CARP's position is not to go there, what alternative focus might guarantee that we get the job done there?

**Mr. Gleberzon:** I think you have it. It already exists; we have an integrated system that already exists. What it needs to be is reformed, not totally revised. I'm not sure if that's what you're asking me, but that's where I think the answer lies. By speaking to the people who know how the system should work, who know how it does work and how it can be repaired, I think we can get the kind of system you're talking about, one that's going to

be fair, one that's going to be expeditious, one that's going to—I can't say it would reduce costs, but use money wisely. I think that's the way to go.

**Mr. McMeekin:** Ms. Hall was out this morning, and she went out of her way to say that that's exactly what the commission is doing: meeting around the clock with the government to make sure things are fair and expeditious.

**Mr. Gleberzon:** But I think that, talking of silos, creating these kinds of silos within the human rights sector will go against that effort.

**Mr. McMeekin:** Bill, you may be right. I really appreciate your wise counsel on that. Thank you.

**The Chair:** Thank you for your presentation.

#### COALITION FOR LESBIAN AND GAY RIGHTS IN ONTARIO

**The Chair:** Next we have the Council for Lesbian and Gay Rights in Ontario. Folks, can I get you to state your names for Hansard before you speak. You have 30 minutes, and you may begin.

**Mr. Richard Hudler:** My name is Richard Hudler. Thank you very much for giving us this opportunity to address the committee. I would like to introduce us and say a few words, and then the others will speak. Arti Mehta is our political action coordinator. Tom Warner is the founding member of the Coalition for Lesbian and Gay Rights in Ontario—it's "Coalition"—and we call it CLGRO. He is one of our directors. He has a long history with the Ontario Human Rights Commission, having served as a commissioner from 1993 to 1996. Nick Mulé has been with CLGRO since 1989 and is also one of our directors. He is chair of the Rainbow Health Network, a reference group of CLGRO.

I am the CLGRO administrator. I also have some history with the commission, having served for a period on a gay and lesbian advisory committee that was set up on sexual orientation shortly after sexual orientation was included in the Human Rights Code, and having gone through a successful complaint process 10 years ago.

The Coalition for Lesbian and Gay Rights in Ontario is a coalition of some 20 groups and hundreds of individual members in all parts of the province. Founded early in 1975, CLGRO has concentrated its efforts in the areas of grassroots organizing, public education and government lobbying. Since the first 12 years of CLGRO's existence was devoted to getting sexual orientation included in the Human Rights Code, CLGRO also has a long history with the commission.

When I filed my complaint against the mayor of the city of London, Ontario, for refusing—

**Mr. Kormos:** Dave says she's back.

**Mr. Hudler:** Yes, I hear that.

**Mr. McMeekin:** They can't find her there.

**Mr. Hudler:** —for refusing to issue a proclamation for lesbian and gay pride in 1995, I wanted the complaint to be in the name of the Homophile Association of London, Ontario, which had filed the application for their

proclamation and of which I was president at the time. It was necessary for me to file as an individual.

I want to express my appreciation of the changes suggested in Bill 107 which will allow for systemic complaints and will support the ability of the commission to deal with such complaints.

There are other aspects of the legislation which we support and there are aspects we seriously believe need to be changed, and I will ask those to be addressed by Arti, Tom and Nick.

**Ms. Arti Mehta:** The Coalition for Lesbian and Gay Rights in Ontario believes that Bill 107, if adopted as currently drafted, could establish a much weaker and less accessible human rights system in Ontario than the one we have now. While there is much in Bill 107 that is commendable and that is intended to streamline and enhance the system, those features will not be sufficient to ensure that Ontario has a better human rights system than we have today unless the bill's obvious flaws are corrected.

In particular, we have been concerned that the new system created by Bill 107 in its current form would not be publicly funded in the future. We have been worried that we could be confronted with a system in which users would be required to pay fees in order to make an application to simply get the chance to have their complaint considered. In addition, Bill 107 could result in a system in which there is no guarantee that complainants would be provided with free legal and other assistance in the preparation of their complaints or in understanding the legal process that would be used to deal with complaints.

We do welcome the fact that Bill 107 would establish a new Human Rights Commission having a mandate to identify and promote the elimination of systemic discrimination practices, including developing and conducting programs of public education and information. And providing complainants with direct access to the new Human Rights Tribunal for disposition of their complaints is a positive change.

But we are calling for substantial amendments to Bill 107 to strengthen its provisions and ensure that the new human rights system that it establishes really will be more efficient and more effective than the one we have now.

1210

**Mr. Tom Warner:** We are aware that the Attorney General has stated that Bill 107 will be amended to ensure that the system will be publicly funded and that every complainant will have access to free, independent legal counsel to handle their case regardless of the complainant's income, although I gather there's still some question as to whether that is the case, but that was our understanding. However, very few details have been provided to date to give assurance that the new system will have the infrastructure necessary to provide assistance to complainants, will have sufficient public funding and will be robust enough to ensure that complainants really do get their day in court.

I was a member of the advisory committee to the Human Rights Code Review Task Force that produced

the Cornish report that recommended a new system to provide direct access to a tribunal process. Bill 107 contains this important change, which CLGRO supports. We do not support calls that have been made by many other groups in the province to scrap the direct access route and to retain the investigation requirement and process of the current system. Direct access to the tribunal process offers the best prospect to overcome the all-too-well-known problems of backlog, delay and dissatisfaction with the investigative process that plague the current system.

But a key feature of the Cornish report's proposed new system was providing direct access to a tribunal process within a publicly funded system in which regional equality rights centres would provide free legal and other assistance to complainants. There was no contemplation that users of the system would be required to pay to access it or to cover the costs of a hearing. As the report stated, "The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions." That's from "Achieving Equality," on page 62. Accessibility by those who have a need to access the human rights system was a cornerstone of the Cornish recommendations.

In contrast, Bill 107, as it currently stands, creates a new section 45.2 of the Human Rights Code that gives the tribunal the authority to establish and charge fees for expenses it incurs in connection with a proceeding, subject of course to the approval of the minister. This introduces the prospect that the tribunal could establish fees that must be paid in order to have a complaint dealt with by the tribunal. In addition, a proposed new section 46.1 of the code states that the minister may enter into agreements with prescribed persons or entities to provide legal and other services to applicants or other parties to a proceeding before the tribunal, and the minister may provide payment for the services. That wording does not oblige the minister to ensure that complainants are provided with assistance or to pay for the services.

These two new sections of the code, if retained in the final version of Bill 107, could someday result in a completely user-pay human rights system. Under such a system, complainants would be left on their own to hire a lawyer, if they could afford one, or they could try to navigate the hard-to-understand legal process on their own without any legal advice or assistance, often against corporate or government respondents who have considerable financial resources to pay for the best possible legal representation. A user-pay system would disadvantage or totally disenfranchise the great majority of the people that the human rights system is intended to assist.

On a personal level, I want to add that I am not among those individuals who have expressed total opposition to the reforms contained in Bill 107. I am both a community activist who has provided advice and assistance to many people about filing complaints of discrimination and a former Ontario human rights commissioner who was once faced with the difficult task of deciding which

complaints, based on the evidence presented by the investigation, should be referred to a board of inquiry. I have seen the current system from both sides. I know all too well the inadequacies of the current system.

I do not support retaining the status quo for human rights in Ontario. Reform of the system is long overdue. What is needed is a robust, publicly funded system that will be up to the job that needs to be done.

The solution does not lie in simply providing more funding for the current system. It requires substantial structural change. Bill 107, as it is currently drafted, only goes part of the way to providing that change.

**Mr. Nick Mulé:** In conclusion, we want to reiterate that CLGRO supports reform of the human rights system in Ontario. Reform is long overdue. It has been over 20 years since there has been a significant overhaul of the Human Rights Code's basic provisions and of the structure and mandate of the commission. We commend the Attorney General for taking action through the introduction of Bill 107 to correct the many flaws of the current system.

Now that the process of reform has finally been put in motion by way of legislation, it is vitally important that the results achieved be the right ones. CLGRO has long called for the Human Rights Commission to be given a mandate to deal with systemic discrimination and to conduct public education on human rights issues. We are pleased that through Bill 107, those important improvements to the human rights system will finally be achieved. The opportunity provided by the introduction of Bill 107 to achieve significant, meaningful reform of the Human Rights Commission should not be lost. We don't want Bill 107 to be scrapped, but we do support its being significantly amended. We believe that without the amendments we have called for today, Bill 107 could result in the replacement of one seriously flawed system with another system that is just as seriously flawed. Frankly, that would be a tragedy for the thousands of Ontarians for whom the Human Rights Commission is the only place they can turn to in order to seek redress when confronted with unlawful discrimination.

Bill 107 must enshrine the principles of full public funding and free access to the system, including the guarantee of the right of complainants to receive legal and other services free of charge, and it needs to clearly specify the means by which those objectives will be fulfilled. Anything less than that will leave open the prospect of a much less accessible and ultimately less effective human rights system in future than the one we have now.

**The Chair:** Thank you very much. We'll begin with Mr. Kormos.

**Mr. Kormos:** Thank you, Chair.

I was waiting for him to let me know how much time we had.

**The Chair:** Five minutes each.

**Mr. Kormos:** Thank you very much for being here today. Let's talk about the funding of the support for victims of discrimination. Earlier today we were given a copy of the proposed amendment: "The minister may

enter into agreements with prescribed persons or entities for the purposes of providing legal services and such other services as may be prescribed to applicants or other parties to a proceeding under the tribunal"—applicants or other parties. "An agreement under subsection 1 would provide for payment of services."

So then in the little explanatory note, as these papers are prepared—if there are going to be weasel words, this is where the weasel words come up, in the little cross-word puzzle: "The minister would establish a human rights legal support centre"—singular—"to provide a range of services, including information, support, advice, assistance"—so far that stuff is being done through those damned 1-800 numbers, which I suspect will soon, as the government loses more lottery revenue, turn into 1-900 numbers—"and legal representation. The minister would fund the legal support centre"—again, singular. "The services would be available, where needed, across the province." The "where needed" could imply where geographically they're needed. Well, hell, where wouldn't they be needed? What part of the province doesn't have people living in it that are potential victims of discrimination? That then suggests that "where needed" may well have a means test. Services where needed; in other words, by whom are they needed?

1220

At the end of the day, though, we're still left with the observations of things like offices of the worker adviser, where the waiting lists are two years plus, of legal aid clinics, and I don't know—are you in London still?

**Mr. Hudler:** No, I'm in Toronto.

**Mr. Kormos:** You're in Toronto. But legal aid clinics where, across the province, they are so underfunded that they've had to restrict their mandates in terms of who they represent, or legal aid certificates with—what are the hourly rates now? I have no idea; \$60 an hour; \$70 an hour—or with caps on the number of hours available. The government can't fund the legal aid system as it exists now. Women seeking access to Family Court to protect themselves from abusive spouses and murderous spouses can't get lawyers because lawyers won't take their certificates because they've put an artificial cap on the number of hours, for Pete's sake.

Sorry, my friends. I don't take much comfort in the announcement today. I really don't. I'm really concerned about it because today was a PR exercise—God bless 'em for doing it—a PR exercise on the part of Mr. Bryant, and I like Mr. Bryant, but to try to overcome the resistance to this bill on some of those fundamental issues. We'll have fundamental disagreements about whether the Human Rights Commission should function and prosecute in the public interest, which is where I come from, or in the more private interest, which is where the supporters of direct access are coming from. Fair enough. That's a legitimate argument; that's a legitimate debate. But damn it, I'm disturbed by the effort today to pull the wool over folks' eyes in terms of this promise of funding when it's a pretty hollow promise. I'm sorry for having gone on like that. I don't usually do that.

*Laughter.*

**Mr. Kormos:** I meant “apologize.” But I thank you very much for your focus and your concern about that issue. That’s something that we’ve got to push the government on.

**Mrs. Van Bommel:** I want to say thank you for making your presentation. There have been issues brought up this morning, and I’d like to address one with you. I know you didn’t deal with it in your presentation, so if you would give it some thought I’d appreciate that very much. There has been a concern about the—and it was brought up initially by Barbara Hall, who’s the current chief commissioner. She talks about the ability to appeal. We’ve been hearing different interpretations or different opinions on the ability to appeal. One of them is that there should be an ability to appeal a tribunal’s decisions to a higher court. Then, on the other side, what we’ve heard this morning is that very often the people who exercise that appeal mechanism are the respondents because they’re not happy with the decision, or they use it as a delay tactic to avoid acting on the decision. I just want to have your opinion, and I know I’m kind of throwing this at you at the last moment, but I’d like to have your opinion on the idea of, should there be an appeal mechanism or not?

**Mr. Warner:** I guess I’ll attempt to answer that. Yes, I think there should. I actually think the current provision in Bill 107 is probably sufficient on that in terms of providing for an appeal but specifying the grounds on which an appeal could be made. I think that would certainly address the point that you’ve made that often it’s the respondent who wants to appeal. It would certainly reduce the number of instances where there could be an appeal, but I think it probably strikes a good balance. My own view is, probably what is in 107 now is sufficient on that.

**Mrs. Elliott:** I just have a brief comment rather than a question, but I would like to also thank all of you for making the time to be here this morning and to make your presentation. I certainly share your concern that, if the model is to be changed, there’s an absolute need for the appropriate supports in place to support complainants, who, as you know, are very often very vulnerable people who are of very limited financial means. I have to say, I share Mr. Kormos’s concern with respect to the amendments that we’ve seen so far—although we haven’t seen the full text of them—that don’t seem to go to the extent that is really needed in order to ensure that those supports will be in place. I think that’s something that we will need to follow up much more closely as we continue our deliberations in the committee. I thank you for highlighting that and, again, thank you very much for your presentation.

**The Chair:** Thank you very much for your presentation.

**Mr. Zimmer:** Mr. Chair, I want to bring forward a motion. I’ve given advance notice to my colleagues opposite, so I’ll make the motion. I move that Michael Gottheil, who’s the chair of the Human Rights Tribunal, be invited to attend tomorrow, Thursday, November 16,

and that we find a slot to fit him in. I think it’s important to hear from Mr. Gottheil. He is the chair of the Human Rights Tribunal as opposed to the commission. Obviously, what goes on in the tribunal or what will go on in the tribunal if this Bill 107 is passed is important. It’s the tribunal that will be designing the rules. So I think, given all that we’ve heard, it’s entirely appropriate that we hear from him. Earlier we moved to extend an invitation to the chair of the commission and the past chairs of the commission, so I think it’s entirely appropriate that we hear from the chair of the tribunal.

**Mr. Kormos:** I intend to support that motion, but we also moved and passed a motion to have front-line staff from the commission appear before this body. Those front-line staff have been frustrated, intimidated and effectively prevented from coming before this body. I say to you, Mr. Zimmer, I support your motion. We should be hearing from everybody with any background, experience, counsel that could be provided to us with respect to this matter. As I say, it’s a very serious matter. But I am incredibly concerned about the fact that those front-line staff have to date, insofar as I am aware, been told they’re not to appear in front of this committee. It is up to the ADM senior management to choose—because we didn’t just ask for commissioners and former commissioners; we asked for management staff, non-union staff. They’ve got important things to say. We heard from a former management staff person this morning, the very first presenter, Ms. Silberman, who unfortunately was sarcastically mocked by the person who succeeded her. You’ll recall that comment.

So we asked for management staff; we asked for front-line staff. That means unionized staff. I say that it’s up to management to decide which management staff come here. I say it’s up to OPSEU to decide which front-line staff come here. So that’s a serious problem. We’ve got some obstruction of the work of this committee going on somewhere. That could well be a contempt of this committee. I just put notice forward today that this is going to become a very serious issue if this committee’s motion to have front-line staff here is frustrated, obstructed by somebody at some senior level in the commission tribunal or in the ministry overseeing it.

I expect there will be other motions as we proceed. This is going to be a lengthy process and I have no qualms about that. We’re going to be spending a lot of time in this committee room over the course of this month and next month and then into the winter months, and that’s fine by me. We’ve been hearing some fascinating stuff and, as you well know, I have no qualms about hearing from people who are on all sides of this issue—who are supportive of the proposal, who are opposed to the proposal, who are critical of it in any respect—because I think we’d better be very, very cautious in terms of how we approach this. I’m telling you now—you’re the parliamentary assistant—somebody’s throwing their weight around at a senior level. I will do my damned best to make sure that is not going to be successful. I have no further comments on this.

1230

**Mrs. Elliott:** I would certainly support the motion as I understand it, which was to include front-line staff. I think we need to have some mechanism to make sure that those staff are able to come forward if they have representations they wish to make before this committee.

**Mr. Zimmer:** This motion deals with Mr. Gottheil. There was a motion that was dealt with earlier, and I think Mr. Kormos is speaking to issues surrounding that one. But this one just deals with Mr. Gottheil's attendance tomorrow.

**The Chair:** We have an opening at 10:40 tomorrow morning for 20 minutes. If the committee is in agreement with that, we can slot him in for that time. Or we can start earlier.

**Mr. Kormos:** What time are we booked till tomorrow?

**The Chair:** We're booked from 9:30 until 12.

**Mr. Kormos:** I'm prepared to agree to sit till 12:30 to accommodate this person for 30 minutes. He may or may not use the 30 minutes, but it would be less than fair to not accord him—

**The Chair:** We'll have to sit until 1. The last presentation tomorrow is for 12, so that will go to 12:30. So if you want to accommodate this gentleman at the end, we will have to sit until 1.

**Mr. Kormos:** No, no. You have a 20-minute slot available. I'm saying, extend that 10 minutes. Everybody is going to be delayed by 10 minutes. My apologies to the people who will be inconvenienced, but give this chair of the tribunal a 30-minute slot and just push everything ahead 10 minutes so we'll be here till 12:40 or 12:45.

**The Chair:** We'll do that, then.

**Mr. Kormos:** Again, it's a simple matter of you not noting the clock. And a curse on anybody who draws your attention to it. There is no clock in this room anyway.

**The Chair:** Mr. Zimmer, can you repeat the motion?

**Mr. Zimmer:** That Mr. Michael Gottheil, the chair of the Human Rights Tribunal, be invited to attend this committee tomorrow at 10:40 for a 30-minute presentation.

**The Chair:** Okay. If the committee is in agreement with that—okay.

Then that ends today's—

**Mrs. Elliott:** Chair, are we going to be able to get a copy of the full text of the amendments, not only the members of the committee but the members of the public who are making presentations? Can we get them immediately? I understand there was some suggestion of a technical briefing tomorrow afternoon. However, as I understand it, that's just for Mr. Kormos and myself, but I think it's important for those people who are doing presentations tomorrow morning. Some people really felt disadvantaged by the fact that they did not have the benefit of those amendments before them today. I think it's important that they have access to that.

*Interruption.*

**Mr. Kormos:** Braille? If I may speak to that, that's not only fair, but with some embarrassment I have to acknowledge, and it's an embarrassment that I suggest that everybody should share with me, that it was a comment from the spectators that Braille would be an appropriate—again, look at where we're at, that that didn't come naturally, that we didn't address it unilaterally. The fact is that persons with disabilities have a very strong interest in this. We've acknowledged that by making strong efforts to ensure that there is access to this committee. This committee would be embarrassed if it were not to make those same briefing materials available in Braille.

**Mr. Zimmer:** Let me work on this over the—and I understand the point; it's well taken. We'll figure out some way to deal with this.

**Mr. Kormos:** Because, yes, it would be discriminatory, wouldn't it?

**The Chair:** That is the end for today's meeting. We will meet tomorrow morning at 9:30.

*The committee adjourned at 1235.*





## CONTENTS

Wednesday 15 November 2006

<b>Subcommittee report</b> .....	JP-877
<b>Human Rights Code Amendment Act, 2006, Bill 107, <i>Mr. Bryant / Loi de 2006</i></b> <b>modifiant le Code des droits de la personne, projet de loi 107, <i>M. Bryant</i></b> .....	JP-878
Ministry of the Attorney General .....	JP-878
Hon. Michael Bryant, minister	
League for Human Rights of B'nai Brith Canada .....	JP-879
Ms. Toni Silberman	
Ms. Anita Bromberg	
Association of Human Rights Lawyers .....	JP-885
Mr. Mark Hart	
Ms. Yola Grant	
Ontario Human Rights Commission .....	JP-889
Ms. Barbara Hall	
Mr. Raj Anand .....	JP-892
CARP .....	JP-896
Mr. Bill Gleberzon	
Coalition for Lesbian and Gay Rights in Ontario .....	JP-899
Mr. Richard Hudler	
Ms. Arti Mehta	
Mr. Tom Warner	
Mr. Nick Mulé	

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JP-32

JP-32

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**Jeudi 16 novembre 2006**

**Standing committee on  
justice policy**

**Human Rights Code  
Amendment Act, 2006**

**Comité permanent  
de la justice**

**Loi de 2006 modifiant le Code  
des droits de la personne**

Chair: Vic Dhillon  
Clerk: Anne Stokes

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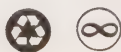
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 16 November 2006

Jeudi 16 novembre 2006

*The committee met at 0934 in room 151.*HUMAN RIGHTS CODE  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE  
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

**The Chair (Mr. Vic Dhillon):** Good morning, folks. Welcome to this meeting of the standing committee on justice policy. The order of business this morning is Bill 107, An Act to amend the Human Rights Code.

To make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services have been provided. I would ask that the presenters speak at a slow rate so that the sign language people can do their job, because it's sometimes difficult for them to do their job if one is speaking really fast. Also, we have two personal support attendants present to provide assistance to anyone requiring it.

Actually, we only have one sign language interpreter. He'll be providing sign language upon request.

INCOME SECURITY ADVOCACY CENTRE  
CATHERINE FRAZEE

**The Chair:** Our first witness today is Ms. Cynthia Wilkey, if she could come forward. Good morning, Ms. Wilkey. You have 30 minutes and you may begin.

**Ms. Cynthia Wilkey:** Thank you very much. I am a staff lawyer with the Income Security Advocacy Centre, and I would like to thank the committee very much for the opportunity to speak today. But before I speak, I would like to be joined by Catherine Frazee, who is a former chief commissioner of the Ontario Human Rights Commission. As I believe you heard yesterday, Ms. Frazee was intending to appear with Raj Anand, but was unable to do so because of a personal emergency. As ISAC has already provided our submissions in writing to the committee, I would like to, with your agreement, give Ms. Frazee the first half of our 30 minutes.

**Mr. Peter Kormos (Niagara Centre):** I have no quarrel with that, except that the committee made a commitment to effectively ensuring that former chairs of

the commission would have access to the committee for a full 30-minute slot. So that's fine by me, but Ms. Frazee is, in my view, entitled to have access to a full 30-minute slot at some point. But if she wants to do it as half of yours, God bless.

**Ms. Catherine Frazee:** Thank you very much to members of this committee for allowing me the opportunity to speak today in support of Bill 107. Thank you especially to my colleagues, the Income Security Advocacy Centre, for offering to share their slot when, as was explained, for compelling personal reasons I was unable to be present yesterday.

I'll going to be speaking today in my individual capacity as one who was privileged to serve from 1989 to 1992 as chief commissioner of the Ontario Human Rights Commission. In my present work, I'm a professor at the School of Disability Studies at Ryerson University. To allow time for discussion and to stick within a 15-minute opportunity to address this committee, I'm going to limit my presentation to 10 minutes, during which time I will not by any means be comprehensive. I'm going to focus my attention primarily on the role of the Human Rights Commission. I recognize that the Human Rights Tribunal is an important, vital component of this proposal, but I'm going to focus on the commission and in my time I'm going to make just two points.

0940

The first of these is as follows: The greatest problem with our human rights system is neither backlog nor delay, pernicious though these problems have been and will perhaps continue to be. The greatest problem with our human rights system is that too many people are left out of it. I believe that Bill 107 can move us incrementally but hopefully toward addressing that problem.

Let me explain it this way: When the primary raison d'être for a human rights system is at its core the redress of individual complaints of discrimination or individual acts of discrimination, when that's the primary reason for a human rights system, it is, I submit to you, inevitable that certain individuals will enjoy far greater access to and success from having their human rights claims addressed than other individuals. A system like our present system, a system that we are seeking to reform, by its very nature privileges individuals who have more robust supports and the most resilient sense of entitlement already. People who live in conditions of profound disenfranchisement, people whose experience of the

world is shaped by multi-generational poverty, by institutionalization, by alienation and by the degradations of social and physical violence: These people do not present themselves at the door of the Human Rights Commission ready to proceed to articulate a single human rights complaint. It doesn't work that way for everyone. Those in most need of human rights protections overwhelmingly remain unserved by individual enforcement.

Chief Commissioner Barbara Hall yesterday spoke of the need for balance between addressing individual claims and creating a culture of human rights. I agree with her assessment, and I would add to that assessment my conviction that such balance can only be achieved by liberating our Human Rights Commission from its responsibility as gatekeeper for individual complaints and by equipping the commission for a clear and unfettered role as human rights champion, catalyst and watchdog. Bill 107, in my view, makes this possible, and it makes it possible in precisely the way that has been detailed by experts such as Cornish and La Forest, people who have studied this problem and without exception recommended abandonment of the gatekeeping role of Human Rights Commissions.

My second point is that the task of human rights protection can no longer be reduced to a simple whodunit, a contest of allegation and response. It's not that simple. The task of human rights protection requires tools and capacities far beyond fact finding and conciliation, essential though these processes may be. I believe that Bill 107 will permit our Human Rights Commission to do more of what it does best and to deploy its expertise and resources where they are most desperately needed.

When members of our community are allowed to languish and perish in boarding house isolation and despair, when gay and lesbian youth take their own lives in the face of relentless bullying and homophobic hostility, when law enforcement officers respond with lethal force to those who are in mental health crisis, when racialized youth are made to feel like pariahs in their own schools and neighbourhoods, when eugenic motives entrench themselves so deeply in our culture as to imperil present and future generations of people with intellectual and other disabilities, when such atrocities prevail, there is no simple perpetrator of discrimination, no single wrong that can be righted by a human rights complaint. There is deep inequality, deep injustice, the kind that calls for a new paradigm in human rights enforcement.

Bill 107, in my view, offers the possibility of a Human Rights Commission focused on the larger task, a commission that is outspoken and respected, a commission of clear conviction and moral authority, a commission equipped to intervene with sophisticated methods of policy analysis and intervention, a commission that will lead in shaping public opinion and public policy. We know this is possible.

Our current Human Rights Commission, beleaguered though it has been by a gatekeeping mandate that is utterly antithetical to the spirit of the legislation it is mandated to uphold, has nevertheless made major con-

tributions through its policy and public dialogue initiatives. In recent years, as you all know, we have seen the commission's groundbreaking contributions on important issues like racial profiling, economic and social rights, accessible public transit, safe schools and gender identity, to name just a few. I applaud this work and I affirm the necessity for much more of it.

It is my belief that Bill 107 will enable the commission to do much more strategic, influential work and to play a leading role in advancing a culture of human rights in this province. So I urge to you proceed with the reforms detailed in Bill 107, as amended, and I urge you to join with equality seekers everywhere in this province as we remain vigilant to ensure that our new system of human rights delivers on the great promise of this historic moment. Thank you.

**The Chair:** You may continue.

**Ms. Wilkey:** Would the committee like to ask questions at this point of Ms. Frazee, or should I continue?

**The Chair:** I think you could finish and then we could have questions at the end.

**Ms. Wilkey:** The Income Security Advocacy Centre is a specialty legal clinic funded through Legal Aid Ontario. ISAC has a province-wide mandate to engage in law reform work on income security issues using community organizing, policy development and test case litigation.

We are an independent, community-based organization that is directed by a community board drawn from low-income people and activists across Ontario. We are part of Ontario's network of general service and specialty legal clinics that represent low-income Ontarians.

ISAC legal staff have had many years of experience representing people who have made complaints under the Human Rights Code. I, personally, have been advising and representing complainants for almost 20 years.

In the five years since ISAC opened its doors, we have made little use of the commission process. Why is that? It is not because low-income Ontarians lack issues that could and should be brought to the Ontario Human Rights Commission. The clients of the clinic system are among the most disadvantaged and vulnerable Ontarians. Rather, our experience over many years of working in and with the human rights system in Ontario has taught us that the current complaints process holds out little hope of satisfaction for our clients. Instead, we have had to look to other avenues for law reform, including time- and resource-consuming charter challenges in Ontario's courts.

**0950**

One of the speakers yesterday morning spoke of the Ontario human rights system as being the charter for ordinary people. I wish that were true. It simply isn't.

ISAC supports the initiative of the Ontario government in introducing Bill 107. There is broad consensus that the current human rights enforcement process is not working for Ontarians and must be reformed. Two large public consultations—the 1992 Cornish task force in Ontario and the 2000 La Forest report federally—have thoroughly examined the Ontario type of enforcement

model and come to similar conclusions about how to address dysfunction in both settings. Specifically, both consultations recommended eliminating the commission's gatekeeper function and giving complainants the right to go directly to a human rights tribunal. This is a change that has been urged by the UN committee on economic, social and political rights in 1998 and 2006, and by the UN human rights committee in 1999. Both of the consultations recommended replacing the commission's mandatory complaint investigation process with a combination of legal supports for complainants and activist powers for the tribunal. Both of the consultations saw the need to clarify and refocus the role of the Human Rights Commission so it could become a clear advocate for human rights and be relieved of the burdensome and conflicting roles imposed by the neutral investigation and gatekeeping mandate.

Bill 107 draws on the work of both of those consultations and incorporates these most fundamental recommendations. The reforms proposed by Bill 107 will create significant new opportunities for low-income Ontarians and legal clinics such as ISAC to use the human rights enforcement system to promote equality. We hope it will also allow the commission to increase its public policy and advocacy work, including the use of its investigation capacity to support needed systemic research and litigation. We particularly see the potential for the reforms to give both the commission and anti-poverty activists a greater opportunity to deal with core issues for our constituents, such as the promotion of social and economic rights and the enforcement of international human rights through domestic processes.

Change of a system as important to the core values of our society as human rights enforcement is surely cause for careful consideration, but there is ample evidence that change must be made. There is widespread dissatisfaction with the status quo. The commission, in spite of the continued efforts of committed staff and talented chief commissioners, has not over the past two decades been able to figure out how to make its impossibly conflicting roles work together.

It is quite unfair to maintain that there has not been sufficient consideration of and consultation on how to fix this problem. We have the guidance of the Cornish and La Forest reports, both backed by massive, open public consultations and led by exemplary public figures with extensive understanding of legal enforcement processes. Many of the groups appearing before this commission have also participated in those prior consultations. There is nothing that has happened to change the validity and relevance of that important work.

Defending human rights in 2006 means honestly confronting the intractable flaws and failures of the current system. As human rights advocates, and you as members of a Legislature that values human rights, we must be prepared to fashion a new and better way of protecting and promoting human rights in this province. Bill 107 may not be perfect, but it is a considered and thoughtful approach to the problems that we all know plague the

system. There are very solid reasons to see Bill 107 as charting a new direction that will be a vast improvement for those seeking the protection of the code.

We are asking you to consider and support amendments that will strengthen the intent of the bill as introduced and to move quickly towards passage of the bill into law.

In its written submissions, which you should have before you, ISAC has made a number of specific recommendations for amendments. I am happy to say that many of our key concerns were addressed by the Attorney General's announcement yesterday. Of those that remain unaddressed, we would ask you to take a look at our recommendations with respect to the following six issues:

(1) The anti-racism and disability rights secretariats: For reasons we have outlined, we are supporting other groups who are asking that these provisions be removed and that their mandates be folded into the general mandate of the commission.

(2) With respect to the remedies that can be sought by the commission, like so many other advocates, we are concerned that the commission is restricted to section 43 public interest remedies. We believe it is an important part of the commission's systemic work to be able to seek section 42 remedies on behalf of individuals.

(3) The need to review the adequacy of financial resources for the legal support centre is critical in our view because of the difficulty in anticipating the demands that will be placed on a legal support centre in future.

(4) We believe it is important for the bill to incorporate authority for third parties to bring applications to the tribunal. Because groups like ISAC often have clients who are too marginalized or too vulnerable to file claims, we are asking that third parties who can demonstrate an interest in the subject matter of a complaint be allowed to make an application to the tribunal.

(5) Yesterday, the AG announced amendments dealing with the limitation period for making applications. The movement from six months to one year is certainly a significant and welcome improvement, but we cannot see any principled reason why the code would not be brought into line with the two-year limitation period that applies to most other civil claims.

(6) Finally, the bill deals specifically with tribunal consideration of commission documents in a permissive way. Section 44 permits but does not require the tribunal to consider commission documents. We think that should be mandatory.

Thank you again for your attention and thank you for allowing me to share my time. If there is any time, we would both be happy to respond to questions or comments.

**The Chair:** Thank you very much. We have about three minutes for each side. We'll begin with the official opposition.

**Mrs. Christine Elliott (Whitby-Ajax):** I do have a question for Ms. Frazee, if you don't mind. Thank you

very much for being here today and making a presentation.

My question—and I asked some of the presenters about it yesterday—is that while the commission would be freed of the gatekeeping function under the new system, I'm wondering if you feel that there are sufficient mechanisms in place in the legislation as drafted now to allow the commission to be sufficiently aware of what's going on with individual complainants and getting additional information about systemic discrimination as a result of that.

**Ms. Frazee:** In fairness, I haven't had the opportunity to review in a detailed manner the amendments that have been announced, but my sense, from a quick review of those amendments, is that they do address the concerns that I have had about the articulation between the commission and the tribunal.

I agree with the spirit of your question. It will be extremely important for the commission to be able to monitor trends in human rights litigation through an active role at the tribunal, to intervene in appropriate cases where there is a significant public interest element that the commission is able to raise, and to proceed with systemic inquiries of its own undertaking. In all of those regards, I believe that the amendments do address adequately those imperatives.

**Mrs. Elliott:** Thank you very much.

1000

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you very much. Ms. Wilkey, other than a handful of maverick legal aid clinics, with which I have a natural affinity—

**Ms. Wilkey:** And not with us?

**Mr. Kormos:** Well, you're not maverick. Legal Aid Ontario-funded clinics have consistently supported the legislation and the principles, and that's fair enough. But you, like the others, have also indicated that you don't use or haven't referred or haven't supported your clients in Human Rights Commission applications for redress. Why? Was the commission staff unavailable, were they corrupt, were they incompetent, were they indifferent? Why have you, like other legal aid clinics we've talked to, not used the Ontario Human Rights Commission?

**Ms. Wilkey:** For none of the reasons you have identified, I'm happy to say. It is because my long experience of supporting claimants at the commission, which has been frustrating, disappointing, discouraging and time-consuming, has led me, as I said earlier, to understand that it is unlikely to provide satisfaction to my clients. What happens currently at the commission is that complaints languish for a long period of time—

**Mr. Kormos:** But why?

**Ms. Wilkey:** Why? Because the investigation process is cumbersome. It often yields results that are very unsatisfactory. There is often internal wrangling within the commission. Often the respondents are uncooperative, and that also is a way of delaying the process. There are a million ways in which the process at the

commission can be delayed and derailed, and that in fact happens.

**Mr. Kormos:** Fair enough. But you say the results of investigations are unsatisfactory. Once again, are you talking about incompetent investigators?

**Ms. Wilkey:** I will be honest. I think there is unevenness. The quality of investigations is something that I know the commission has struggled with for years, and certainly as practitioners, as complainant counsel, we see investigations of uneven quality and uneven utility in terms of identifying the existence of discrimination.

**Mr. Kormos:** Ms. Frazee, there was a fellow here yesterday called Mark Hart, and when I read to him the commission's data in terms of the cases it had dealt with, resolved, from its annual report of 2005-06, Mr. Hart, who had worked for the commission at some point, said these numbers were irrelevant because the commission always spins its numbers. Ms. Hall was here and she denied doing that under her stewardship. Were you spinning numbers during your stewardship, Ms. Frazee?

**Ms. Frazee:** That's a great question. In my responsibility as Human Rights Commissioner, it was important to affirm the quality of the commission's work, always. I think we do things with numbers that aren't dishonourable or dishonest, but we attempt to present them in the best possible light. Did I do that? Probably I did. Did I feel compromised in my role as chief commissioner by the bifurcated mandate of the Human Rights Commission? Absolutely and utterly. It was not a time of—

**The Chair:** Thank you very much.

**Ms. Frazee:** Sorry. I have to stop.

**Mr. David Zimmer (Willowdale):** There is another model out there for the reform of the Human Rights Commission, and that's commonly referred to as the AODA model or the Accessibility for Ontarians with Disabilities Act Alliance. They've got a blueprint for reform. Can you comment on your thoughts about their blueprint?

**Ms. Frazee:** I have a great deal of respect for the authors of that report and for the intent of that alternative proposal and for the intent with which it has been presented. I have some concerns, perhaps, about the blueprint in terms of the compromises that I see it makes. I think it is really important to absolutely and utterly relieve the commission of any role in the handling of individual complaints. Complainants deserve, in all cases, the dignity of direct access to an open hearing. So I have some reservations about fully endorsing that blueprint.

But at the end of the day, I'm a pragmatist. I see, in a sense, an offer on the table, and that is Bill 107. I think the offer is a strong offer and moves us clearly in the right direction, and that's why I'm supporting it.

**Mr. Zimmer:** Thank you.

**The Chair:** Any other—

**Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I appreciate your comments.

**The Chair:** Thank you very much.

**Mr. Kormos:** To legislative research, surely there are manuals that set the standards for the intake process at

the commission, because this whole gatekeeping function is what's being argued. Some are arguing the quality of it, the suggestion that the commission and its staff are incompetent or at least erratic in their levels of competence. Others are simply saying that the gatekeeping function shouldn't occur. What we need to know, in a very detailed way, is exactly what the process is in terms of the direction internally, within the commission. We haven't had a chance to sit down and talk with anyone about that specifically yet, have we, Mr. Zimmer? And unless and until we get those front-line workers here, we won't, will we?

Thank you, Chair.

### RAHAMAT RAZACK

**The Chair:** The next presentation is from Rahamat Razack. Good morning, sir. You have 20 minutes, and you may begin.

**Mr. Rahamat Razack:** Good morning. Thank you for the opportunity to speak on Bill 107. My name is Rahamat Wally Razack. I was a complainant at the commission from November 4, 2000, to March 15, 2006, when I was denied my basic and fundamental right of due process, whereby the commission denied to send my claim to the tribunal, a complaint, overwhelmingly with merit, of direct and systemic discrimination against the Workplace Safety and Insurance Board. In the process, I have spent \$35,000, ably represented by Mr. Raj Anand, the former chief commissioner, and Paul Guy of WeirFoulds. Now, I have filed an application for judicial review as of August of this year, which can cost \$15,000 to \$20,000. Also, now I am confronted with an adversarial approach from the commission in terms of submitting to me substantive information I would need for this judicial review.

These are the submissions that I have made from November 4, 2000, to March 15, 2006; \$35,000, which I can ill afford, has gone down the drain. It has made me destitute and bankrupt. My submission is handwritten because I can no longer afford the luxury of having it typed, which would have cost \$30.

1010

The Workplace Safety and Insurance Board—to claim systemic discrimination should be a walk in the park. I've been there for almost 11 years, and everybody knows there is systemic discrimination. The commission's own database only goes back to 1990. I acquired information through the Freedom of Information and Protection of Privacy Act. There were 69 complaints against the WSIB from 1990 to 2003. This is what the WSIB has submitted in my six years at the commission. The only submission they have made is regarding section 34(1)(a). They have made no other submission. The commission did their dirty work, and that is provable.

Now we have Bill 107, which is like a knight in shining armour. But this is something that was recommended way back in 1992 by Mary Cornish at the behest of Premier Bob Rae, and nothing was done. Politicians,

bureaucrats and former commissioners did absolutely nothing about it. Even now, our honourable Premier has waited until the last year of his government to present Bill 107.

As we all know, Bill 107, legislation to overhaul the Human Rights Commission, must pass, with the stipulated key amendments. The only amendment I disagree with is to retain the commission to focus on systemic discrimination. They lack the expertise, they were disinclined to do it, they don't have the capabilities, they are incompetent and they shouldn't be allowed to continue to focus on systemic discrimination. So the legislation must pass, with the stipulated key amendments enunciated by the Attorney General a few days ago, and guarantee adequate legal support for all complainants, without a means test.

After becoming bankrupt by the commission, I sought legal help to do the judicial review. I went to the African-Canadian clinic. I'm not black. I don't qualify. They don't have enough for themselves. I've been to the Southeast Asian clinic. I couldn't qualify because I'm not a Southeast Asian. I went to the South Asian clinic. They don't have funding. I went to legal aid. I have a TV, so I don't qualify. I don't have a DVD.

It is important that complainants are adequately and appropriately funded for legal representation because it is very, very costly. You've got lawyers charging \$500 an hour.

Bill 107 should also embody an amendment to gut and completely dismantle the commission, with its financial allocations disbursed to provide legal representation to complainants and make the tribunal more robust, professionalized—end patronage—faster, stronger and more effective.

Bill 107 will replace the commission's present process that is a bureaucratic nightmare, inexplicably adversarial, mind-boggling, tortuous, costly, cumbersome, lengthy and openly biased against complainants. They just want to get rid of you at all costs.

Furthermore, as we all know, the commission receives over 2,500 complaints a year but less than 5% are referred to the tribunal. The cases sent to the tribunal are even more lamentable with race-based complaints. Imagine the commission being in existence since 1961-62 and never having had, until last year, a policy and guidelines on racism and racial discrimination. They didn't know how to handle race-based complaints. So what did they do? They threw them in the rubbish bin, dismissed arbitrarily and capriciously all these complaints. A dismal few probably get to the tribunal.

I can recall one, *Smith v. Mardana*. In that case, the tribunal rejected the claim of racism, and the poor guy had to go to the Divisional Court, where he won. He spent 10 years. He was a Midas worker—I don't know—working for minimum wage.

The commission repeatedly—and I have scores of cases—erred in law and exceeded its jurisdiction by breaching its duty of procedural and administrative fairness, in the absence of an unbiased, fair and complete investigation. My complaint is a classic, classic example,

and I will beg, cajole, plead or pay to meet with somebody in the Attorney General's office or the Premier's office for one hour to show them the overwhelming evidence of the incompetence of the commission staff. My complaint is no different, inasmuch as the documents that were placed before the commissioners are tainted by procedural unfairness.

However, the commission staff's recommendations are, in most cases, rubber-stamped by the commissioners. The commissioners are farcical. Commission staff has made about five recommendations to the commissioners. One was reversed, and that was when the commission told them to reverse it. Every other one was rubber-stamped by the commissioners. What purpose this served, with all due respect, I don't know.

In the process of this six years, I have, with the help of Mr. Raj Anand, overturned one of their initial decisions, which should not have been against me. And if I have the time to show you, I will. They made a bad decision, and it had to be overturned.

With all due respect, the role of the commissioners, as I said before, is farcical. The recent appointment of seven new commissioners by the Attorney General is incomprehensible, inexplicable, in light of Bill 107. Why are we going to need seven new part-time, patronage—with all due respect to the work they have done and their ability, why would we need them in light of Bill 107?

Due to the commission's inability and disinclination to process race-based complaints—an arrogance of power, an abuse of power—thousands upon thousands of complaints were denied their basic and fundamental right of due process, which violated international human rights law and is tantamount to crimes against humanity. Three thousand lives is an atrocity; one life is an atrocity.

Politicians, Premiers, bureaucrats, lawyers of the commission and former human rights commissioners are among the people who should be held accountable for this travesty, this quagmire we are experiencing now—and we shouldn't be. This matter should have been settled decades ago. The commission, as all editorials and a majority of people are saying, is a broken system. It didn't fulfill its mandate and should be dismantled.

A lot of us don't know what we're getting into when we get to the commission. We have high hopes: They're objective, they're neutral. To me, that's not so. It took me a year or more into this process before I realized that I'm not getting due process from the commission. I've got to fight an almost insurmountable hurdle to get to the tribunal. I didn't know this until about 18 months into this process. Once I was in it, I was stuck because I'm determined. I persevered. I'm 64 years of age, and I'm not giving up. I'm going to die trying, and if I don't try, I'll die. I'll go to Divisional Court, I'll go to the Ontario Court of Appeal, I'll go to the Ontario Supreme Court if I have to, because I have a case with merit. I was discriminated against by WSIB, CUPE Local 1750 and the Ontario Human Rights Commission.

1020

The commission's decision-makers, culture, policies, practices and track record don't support its capabilities to

investigate and pursue cases of systemic discrimination, as in my complaint. As I said before, in August of this year I filed an application for a judicial review, which can cost \$15,000 to \$20,000. As of November 10, I've been having opposition within the commission to basic information that I'm requesting: telephone records, documents that were before the commission on July 4, 2001. I am being denied information that I can get through a freedom of information request: "We understand your position on this issue is different from ours. I note that you may wish to bring a motion in order to have this resolved." I told my legal agent that I can get this thing under freedom of information, and he said, "No, we can get it in this manner."

During the commission's investigation of my complaint of direct and systemic discrimination against the Workplace Safety and Insurance Board, Mr. David Lee, investigation officer, requested that I show him the slurs and graffiti, indicating that he saw no racism, only bad management—and this is the first time I set eyes on the guy. This was the initial interview with him, on October 6, 2003. This was his statement. Where is he living, 3,000 years ago? There are hardly any slurs and graffiti now. It's subtle, rampant, hidden and covert. Furthermore, Mr. Lee stated that "he will not take a systemic approach to my investigation because it will not find favour with the commission and it will not prevail at the tribunal." He added, "We could claim that every company has systemic discrimination." This is coming from a commission staff, an investigation officer, Mr. David Lee.

Mr. Lee's conduct is representative of the commission, and clear evidence not to breathe life or pour more money down the drain into a broken, failed system. The commission has failed its mandate. It should just disappear. Shoot it in the leg and put it out of its misery.

I reiterate that Bill 107 should be passed retroactively at least to February of this year, if not further back, when Bill 107 was announced by the Attorney General. With the appropriate amendments, there should be an expansion of publicly funded legal representation that guarantees all complainants adequate legal representation without a means test, because legal representation is exorbitant.

In many respects, the tribunal is no better than the commission. Therefore, substantive changes must be made at the tribunal for it to render prompt, fair and effective justice. Forget education; it's not going to work to cure racism. The tribunal must be empowered to levy punitive damages to victims of discrimination—punitive. Send a message. Honda got a message the other day from a judge: \$500,000. They appealed and it was whittled down to \$100,000. Education is not going to work. They're going to throw it in the garbage. Punitive damages, not only corrective but remedial and that sort of thing.

Also, the tribunal must have a system that is transparent and accountable. The tribunal must be professionalized and the patronage system must end. The tribunal would need more judges and more support staff.

Bill 107 is not a silver bullet. Nobody is going to be pleased with it—pros and cons. I've got all that has been written in the ethnic newspapers and in the Toronto Star about it, pros and cons, from everyone under the sun. It's confusing. Which way to go? But we know that from 1962 until now, the commission has failed. We've got to try something else. We can't stay the course. It's not working.

We've got to do something else, whatever it is. I'd rather be screwed by a lawyer than be screwed, as I was, by incompetent staff at the commission, whose salary I've been paying for the 21 years that I've worked in Canada. They have bankrupted me. I've got a 26-year-old adopted son, an almost four-year-old granddaughter and a four-month-old grandson. I can hardly buy them a Happy Meal. What am I going to leave? I've used over \$60,000 of my RRSP—all of it. I have cash-surrendered my \$10,000 life insurance which I've had since 1978. Next year, when I turn 65, there's nothing to get. I have used up the cash values as loans. Furthermore, I've got a \$55,400 line of credit on my house, which I bought in 1985. I paid off the mortgage in 1992. In 2000, when I had worked at the compensation board for almost 11 years, I had not one single cent in debt—not a single cent in debt, thank God.

As I said, Bill 107 is not a silver bullet, but my complaint against the WSIB is a smoking gun for Bill 107. I thank you for the chance to speak on Bill 107.

**The Chair:** Thank you very much. You've taken your full 20 minutes.

**Mr. Kormos:** It's unfortunate. Chair, if I may: Mr. Razack, if you stay here until 12:30—Mr. Zimmer is the parliamentary assistant to the Attorney General—you will be able to have your hour with a person in authority. Please stay here. He'll be finished in this committee at 12:30, perhaps 12:40.

**Mr. Razack:** Mr. Zimmerman?

**Mr. Kormos:** Mr. David Zimmer, right there. He's the parliamentary assistant to the Attorney General.

**Mr. Razack:** God bless you. Thank you very much.

**Mr. Kormos:** Thank you for coming, sir. Stay right here.

**Mr. Razack:** I will. I intended to do that.

1030

#### STEPHNIE PAYNE

**The Chair:** The next presenter is Stephnie Payne. Good morning.

**Ms. Stephnie Payne:** Good morning, and good morning to members of the public who are here this morning. When you listen to other people's stories, you realize that, after all, yours is not that bad, or could be just as bad.

My name is Stephnie Payne. I want to tell you a little bit about me before I get into my personal story on Bill 107, An Act to amend the Human Rights Code. I'll tell you this, but you can see for yourself that I'm an African Canadian woman, but I was born in Barbados. I came to

Toronto in 1968. I have spent many years of my life devoted to community work, especially with youth, young adults and families within the Jane and Finch community. Currently, I'm working on renewal projects with the private sector in Jane and Finch and the San Romanoway for African Canadians and other diverse members of this community. I'm also a school trustee for the Toronto District School Board. And I'm honoured to have been recognized for my many outstanding community achievements by being awarded the Governor General's 125th Anniversary Medal, the Queen's Golden Jubilee Medal and most recently the African Canadian Achievement Award for excellence in education.

However, it is because of my direct experience with the Ontario Human Rights Commission that I'm here today to support Bill 107. In particular, it is an absolute necessity that any reform ensure that claimants have the right of direct access to a tribunal hearing, together with adequate legal supports. I also wish to ensure that no human rights claims ever get dismissed behind closed doors again, and also that both commission and tribunal members have the requisite background, expertise and experience to properly do their jobs under the new legislation.

I want to take you back in time almost 13 years ago. I'm going to tell you my story, and my story is one that I think is quite poignant. It is also one that created a lot of controversy, and the reason for the controversy—there are people like me who may belong to religions that none of you would ever think of. My mother is a second-generation Jew and I was labelled anti-Semitic. No one has ever asked my background, no one has asked how I was raised, but I was automatically given that label.

Being black, being born in the 1940s in Barbados, being of a mother who is interracial and came out black—she was a “dirty Jew,” and I want you all to understand that. My father was a Baptist and we were raised in the Anglican Church. We were ashamed to be Jews because of the stigma that is attached to Caribbean blacks. Many are living in our communities and it goes undisclosed who they are. People need to first check. You need to know the history of individuals before they're labelled, and it is because of this reason and the dismissal from my job in 1994 that I'm here to talk to you.

I'm being passionate about this because I think a great injustice has been done to me, to the speaker previous to me and to many others in this province, and there needs to be drastic change.

I filed a complaint of discrimination in employment, because of my race, my gender and reprisal, with the commission in August 1994. I specifically at that time did not mention the historical background of my mother's religion, and it was for reasons I kept that hidden.

On April 4, 1996, the commission disclosed its report from the first investigation into my case. This report recommended that my complaint be referred to the tribunal for a full hearing on the basis that the evidence

from the commission's investigation supported my allegations that I was subjected to unequal treatment in employment and was subsequently terminated because of my race, colour, ancestry and ethnic origin, and because the evidence also supported my allegation that reprisal was also a factor in the decision to terminate my employment.

On October 2, 1996, the commission wrote to say that after reviewing the investigation report and submissions made on the report, the matter required further investigation and analysis before a decision could be made.

On January 29, 1997, the commission disclosed a second case analysis report, which once again recommended that my complaint be sent to the tribunal. This case analysis report found that the employer's contention that my job had become redundant was "incongruent with the evidence." The investigating officers referred to evidence from the executive director himself that he had been instructed by the board of directors to terminate my employment and that redundancy was "used ... as an excuse." There also was evidence that the executive director gloated that he had found a way of getting rid of me.

Much to my shock, I then received the commission's decision dated March 24, 1997. Contrary to the recommendations made in two investigation reports, the commission decided not to refer my complaint to the tribunal. With regard to the reprisal issue, where both reports had detailed the evidence in support of this allegation, the entirety of the commission's reasons for its decision to dismiss me were as follows: "There is insufficient evidence to indicate that the termination of the complainant's employment was a reprisal for having claimed and enforced" my "rights under the code, as set out in section 8 thereof." No explanation was provided to me as to why the commission now considered the evidence to be insufficient.

On April 9, 1997, my lawyer wrote to the commission to request disclosure of documents and information needed in order for me to apply for a reconsideration of the decision. The reconsideration decision was made by the same commissioners who already threw out my case. To effectively exercise my right to reconsideration, we asked for an answer to the question as to why the evidence in both case analysis reports was regarded as being insufficient to support going to a board of inquiry on the basis of reprisal, particularly when both investigations had concluded that the evidence was sufficient. The commission refused to disclose this information.

By the decision dated April 15, 1998, the commission again upheld its original decision to dismiss my complaint. The commission's decision once again restated that there is insufficient evidence to indicate that the termination of my employment was a reprisal for having claimed and enforced my rights under the code, without providing any actual reasons as to how or why the evidence was regarded as being insufficient.

I subsequently learned that during the entire reconsideration process, the commission's investigation files

related to my case, which includes such things as witness statements and documentary evidence, were lost. The whereabouts of the files were last known at some point prior to the commission's original section 36 decision, and the file was not located again until July 10, 1998, after my complaint was thrown out again on reconsideration.

My case was dismissed even with expert evidence. The commission never sought any expert evidence in the investigation of my case so my lawyer obtained an affidavit from renowned Dr. Frances Henry. Dr. Henry is a renowned expert on issues of racial discrimination and especially anti-black racism. Dr. Henry has testified as an expert witness in court and in human rights proceedings on numerous occasions, and has been retained on several occasions by the Ontario Human Rights Commission because of her expertise. On the basis of her review of the material which was given to the commission in my case, Dr. Henry found evidence of systemic and institutional racism and evidence of an organizational culture that was insensitive and did not give priority to race issues.

In particular, Dr. Henry found evidence of problematic hiring and promotion practices, disproportionate overrepresentation of African-Canadian staff in lower level positions, tokenism, race and gender stereotyping, and failure by the employer to respond to community concerns regarding its lack of African-Canadian employees and its lack of presence in the African-Canadian community. Dr. Henry also identified evidence of racial discrimination in the way that my employer treated me and the racialized environment leading to my being fired. Dr. Henry said that the most striking element in the case was my termination following shortly after I raised the issue of racism in the workplace. Like the investigation officers, she too found that I had experienced reprisal for having raised the issue of workplace racism.

#### 1040

What was so astonishing is that even when we provided this evidence to the commission on a silver platter, they basically refused to consider it. Decisions were made in my case by human rights commissioners. With the exception of the chief commissioner, commissioners are part-time appointees who act in a manner similar to a board of directors. The commissioners meet as a whole at full commission meetings held about eight times a year. The commissioners, from time to time, also meet as a panel of three, called panel meetings. There's no prerequisite that commissioners have any legal background or training in human rights law in order to be appointed.

During the time of my complaint, commission staff, including the commission's senior management team and representatives of the commission's regional offices, attended commission meetings and made oral remarks regarding the strengths and weaknesses of particular cases, participated in discussions with the commissioners, answered questions from the commissioners, and offered their views and opinions to the commissioners regarding the cases. The oral comments made by com-

mission staff at the commission meetings are not disclosed to the parties, nor are the parties afforded any opportunity to respond to these oral comments. In fact, we don't even know who the decision-makers are.

My judicial review: After my complaint was dismissed again, my lawyer brought an application to the courts to have the court review my case. My lawyer also sought to find out what had happened at the commission meetings in my case. The commission fought this. For the next two years, the issue of getting disclosure of what happened at the meetings behind closed doors when decisions were made regarding my case wound its way up the court system. And I can understand what the gentleman was talking about with legal fees, because although my lawyer offered numerous supports and an inordinate amount of dollars pro bono, I ended up, like this gentleman, cashing in my RRSPs to pay for legal costs, which I should not have to. As a law-abiding, taxpaying person of this province, I should not have to do that when my public monies in my tax dollars went to pay these individuals. So you will see from whence I speak.

The Court of Appeal ultimately ordered the commission to attend a witness examination to answer questions as to what facts, arguments and considerations were presented to the commissioners when they decided not to request a tribunal in my case. The registrar of the commission was finally examined on September 13, 2000. From this examination, I found out that in addition to the seven commissioners, there were approximately 15 commission staff members in attendance at the meeting where my case was first dismissed—this is 15—taxpayers' dollars for commissioners who do these sorts of things to people, in particular visible minorities and African Canadians.

In my judicial review, we also had an affidavit from a former human rights commissioner, St. Clair Wharton, who served as a commissioner for two terms from February 1991 to February 1997. Since most of the commissioners are not lawyers or legally trained, former Commissioner Wharton said that most commissioners generally accept and rely upon as authoritative any comments or views expressed by representatives of the legal services branch during commission meetings. I found out that in my case the legal director had given a direction to the commissioners that resulted in the dismissal, and this had not been disclosed to me.

Commissioner Wharton also said that reasons were drafted by commission staff and are largely standardized in form. He said that in his experience as a commissioner, the reasons created by commission staff rarely reflected the actual discussions that took place during the commission meetings or the true substance of the commissioners' reasons for decisions.

With respect to my reconsideration decision, former Commissioner Wharton said that in his last few years as a commissioner, staff recommendations on reconsideration were almost always unfavourable for the complainant and decisions on reconsideration were made as

quickly as turning a page of paper at times. Former Commissioner Wharton believed that he was expected simply to rubber-stamp the previous decision made by the commission, and if he disagreed, he would be faced with resistance.

In my case, the registrar of the commission confirmed that there was no discussion regarding my case and that "it was a very quick vote" to deny me my request for reconsideration, again in secret, behind closed doors.

Eventually, only after all the disclosures and after my lawyer had prepared all the materials and was ready to argue the judicial review, the commission agreed to set aside both decisions and consider my case again, without reference to the earlier decisions. I think at this point the commission realized that I wasn't going to back down. Trust me, if I had to sell my house, I was not going to back down, and I didn't.

Then we went through the process again. The commission simply proceeded to dismiss my case again. This time it had a lawyer write up the reports. They wanted to make my dismissal "judicial-review proof," my lawyer told me. On October 13, 2004, despite all the efforts of my lawyer, I found out that I had no further hope.

I came to the commission with the hope of obtaining a remedy for my experience of racism. Instead, after 10 years of battling with the commission, I felt that the commission's entire handling of my complaint was so unfair as to make a mockery of my lived experience of racism and other African Canadians' in this province. I also know that there was no way I would ever have gotten through the commission's process or stood up to them without a lawyer. Even though my lawyer provided, as I said, a great deal of work pro bono, it was still an incredibly costly and painful event for me and my family. The emotional harm for me was devastating, and it has taken me a long time to recover.

It is for that reason that I am here this morning, because I've waited for this day to come. I'm really pleased to have this opportunity to speak with you. I hope that each and every one of you—I'm getting emotional now—are really listening. The gentleman before me was South Asian. When we look at the hatred within our society and around the world and when we look at the most hated groups in this world, we look at people of African heritage, we look at people from religious backgrounds. We look at the Muslim community and at the Jewish community, which I happen to be a silent part of. I've been totally discriminated against by this province's commission because of my race. No one knew of my religion; of course, they just think I'm black Anglican or Baptist. No one knew of my mother's background. No one knew of my struggle, what I've been through.

So this reform of Bill 107 is a very integral part of the system, and I hope this government—it was sitting on the shelves. Peter, you were part of the Bob Rae government when this sat there. I've got to tell you, there are disappointments in all three parties of government.

For me, this is really, really important, and for a lot of people like me. Fortunately, like the gentleman previous

to me, I had a bit of money to be able to spend on this. There are a lot of people out there who are vulnerable in our visible diverse and ethnic communities who do not have the funds, who take it as the status quo. They don't know what to do. They don't know about the lawyer. They do not know how to act at these. So I would plead with you—

*Interjections.*

**Ms. Payne:** Excuse me, I'm speaking here, and you're talking back there. I feel very disrespected when these things happen.

I don't want any of you around this table to minimize my feelings or to minimize the feelings of any of the groups that have come before you to make presentations, because it is serious. I may be a public school trustee who speaks in the public eye, but I don't go public with my private issues. But today I'm making it public. Simply, it has to be told. The commissioner needs to be sensitized more.

I'm going to sum up. I might have spent my time, but please hear me out.

1050

**The Chair:** Your time is almost up. If you could quickly—

**Ms. Payne:** I am just going to sum up.

**The Chair:** You have 30 seconds.

**Ms. Payne:** There are delays, and these delays are structural. They're also quite systemic. The system can only work if we go to tribunals. A lot of members need to understand that the cases should not be taking 10 to 11 years, like mine did. In review, maybe this provincial government needs to look at ways of retroactively going back over some of the cases that had great merit—a case like mine, for instance—going back and looking at that, because that would be the most historic moment for us. Thank you.

**The Chair:** Thank you very much.

**Mr. Kormos:** Chair, Ms. Payne and Mr. Razack before her tell us a series of events that reveal incompetence or corruption on the part of chief commissioners overseeing these bodies, including the management of the commission, that I think this committee ought to be inquiring into. It's not a big organization. This isn't a huge corporate body with hundreds and hundreds of employees. If these sorts of things are going on, then there has been corruption or incompetence on the part of a succession of chief commissioners, on the part of a succession of assistant deputy ministers who oversee that, and on the part of Attorneys General, who are responsible for this ministry. This committee should be investigating that incompetence or corruption on the part of AGs, ADMs, chief commissioners and management in the commission.

**The Chair:** Thank you, Mr. Kormos.

## HUMAN RIGHTS TRIBUNAL OF ONTARIO

**The Chair:** The next presentation is from Michael Gottheil. Good morning, sir. You may begin. You have 30 minutes.

**Mr. Michael Gottheil:** Thank you for inviting me here today to address the committee. As you know, my name is Michael Gottheil. I am the chair of the Human Rights Tribunal of Ontario and have had the honour of serving in that role since April 2005. Prior to that, I spent close to 20 years practising administrative labour employment and human rights law, first as in-house counsel to two national trade unions, and then as founding partner in one of Ottawa's leading labour and human rights firms. I also taught law at Algonquin College in Ottawa as well as the University of Ottawa.

I'd like to provide you today with my experience and perspective on the modern administrative law tribunal, and more specifically on my perspective on the core principles that I think should embody an effective Human Rights Tribunal.

Administrative tribunals are called upon to determine thousands of applications annually and to do so in an open and timely way. They must consider individual cases, apply policy and jurisprudence, and provide consistency in the application of their constituent statutes. This consistency is important, not only in respect of expectations of parties that may come before the tribunal but also for the community more generally to enable people to understand their rights and responsibilities and to govern their affairs accordingly.

Many tribunals like the Human Rights Tribunal of Ontario deal with parties that, whether or not they are represented by counsel, are not regular users of the legal system and indeed may come from communities that do not perceive the legal system as providing them with equal benefit and standing. As a result, there is an understanding in the modern administrative law world that non-traditional, innovative adjudicative approaches better meet the unique challenges of administrative tribunals, particularly those like the human rights tribunal.

Being involved in a human rights complaint, whether as a complainant or a respondent, is a very serious matter. While an individual human rights complaint certainly has a public element, being involved in a complaint can be an intensely personal affair. It affects economic rights, oftentimes the ability to work free of harassment and discrimination, or indeed the ability to work at all. It involves, for the complainant, issues of dignity and self-worth and, for the respondent, the stigma of being labelled a violator of human rights.

People need to feel that they have had the opportunity to be heard and understood. However, a hearing as contemplated by traditional administrative law principles, with all the procedural and technical trappings, may not in fact give a human rights complainant a meaningful right to be heard and may deter rather than enhance access to justice. More modern adjudication and dispute resolution models can truly enhance access to justice, particularly for those who are marginalized and who face barriers to full and meaningful participation in our communities.

So what are the core values, the principles, that would form the foundation of any tribunal, and more spe-

cifically, the Human Rights Tribunal? In my view, tribunal processes need to be accessible, transparent, fair and timely.

**Accessible:** certainly from a physical point of view in terms of meeting the needs of people with disabilities, people with literacy issues and so forth. Our processes, our forms and our materials need to be produced in an accessible way for people to be able to participate. But accessibility goes beyond that, I think. There is a sense of accessibility which means that all people, whether or not represented by counsel, feel that the process is understandable and relevant to their own experiences, not something so foreign that only lawyers can understand.

**Transparent:** that decisions are made in an open way, with substantive reasons that are clear and understandable.

**Fair:** that the processes ensure that decisions are based on the relevant facts and merits of the case, not on technicalities.

**Timely:** that resolutions are reached and decisions made in a timely way so that delays do not frustrate the objects of the Human Rights Code, those objects being, of course, to prevent discrimination and to provide effective, meaningful remedies, where appropriate.

Given these core values of accessibility, transparency, fairness, timeliness and of course the right to be heard, what kind of approaches might the tribunal consider? We must remember that we are at a very early stage. The legislation is before this committee and the Legislature. Amendments have just been proposed. And the tribunal would certainly engage in a broad consultation process with the community before designing any rules and procedures. However, I would like to highlight a few approaches for consideration.

1100

First, I would suggest that the tribunal should be responsive to different types of cases, different types of parties. For example, broader systemic cases or those which involve complex factual or legal issues may need a more traditional judicial-like adjudication model. But many cases, dealing with fairly straightforward issues and straightforward fact situations, may benefit from a more streamlined, non-traditional model of adjudication.

Second, it goes without saying that all our processes—case management, dispute resolution, and adjudicative processes—need to be supported by well-written, accessible, plain-language information. This includes forms, rules and information bulletins. The tribunal should not be a locked door to the stakeholder community, but an open door.

Third, as I mentioned previously, a less technical, more accessible approach to adjudication—dispute resolution—may be appropriate for a large number of complaints and complainants. There are a number of alternative adjudication models around currently. Small Claims Court and family law have a number of processes, collaborative justice models; Workplace Safety and Insurance Appeal Tribunal; in labour law, expedited arbitration models; and at the Labour Relations Board,

the consultation model. All these models have the same goal: allowing the decision-maker to make a fair and just decision based on the true merits of the case, on the facts, relevant policy and legal principles, and to do so in a timely way.

Some common features of all these models: first of all, expert, skilled and active adjudicators; secondly, simplified processes; and third, having a process where the parties can tell the adjudicator in a simple, understandable way what the case is about and to permit the adjudicator to consult with the parties and to determine what issues need to be decided and what evidence needs to be heard to decide the merits of the case. This allows the adjudicator, with expertise in the area, to hear from the parties and to assist in focusing the case on relevant issues and evidence, rather than having the hearing turn into a legal boxing match where the parties have complete freedom to duke it out using whatever legal tactics and procedural strategies they can think of or afford.

These models provide adjudicators with an ability to determine, in a more informed but highly effective way, the real dispute that needs to be determined. A less formal model can also enhance transparency and the acceptability of the decision-making process for the parties. People may want their day in court, so to speak, but throwing them into a formal judicial model does nothing to enhance their right to be heard and their understanding of the process.

Of course, all adjudicative processes have a mediation function. We have one currently at the tribunal. It's highly effective and no doubt we will continue to have a mediation function. However, there are different approaches to mediation, and a more listening, evaluative mediation approach is one model that might be considered, again to enhance the rights and the interests of parties who come before the tribunal and give them an opportunity to be heard in a meaningful way.

It is probably true that most human rights complaints have at their core a real dispute, a real concern, some real conflict, and it may not, at the end of the day, be something that is covered by the code or will meet the standards for a finding of a violation of the code. However, ensuring that the decision-making and dispute resolution processes are accessible, understandable and fair will enhance not only the acceptability for the particular parties but will enhance the stature of the code itself.

I think I'll end there. I hope my comments have been helpful. I would be happy to answer any questions the committee may have.

**The Chair:** Thank you very much. You have about six minutes each. We'll start with Mr. Kormos.

**Mr. Kormos:** Thank you kindly, sir. I appreciate your coming here today on short notice, although I suspect it wasn't as short as it appears from Mr. Zimmer's motion yesterday. But that's okay.

I think I understand you. I'm pretty sure I understand you. You talk about a gradation of styles, a range of styles in terms of the adjudication. How would that

decision be made, and what role would parties have in making that decision? For instance, you talk about everything from the traditional adversarial adjudicative model that I perhaps am most familiar with, having spent a lot of time in criminal court, both before and after being elected to the Legislature, all the way through to a very informal—

**Mr. Zimmer:** Do you want to rephrase that?

**Mr. Kormos:** I was found not guilty, Zimmer.

Somebody referred to it yesterday as the inquisitorial model. Would parties consent to this? We're dealing with a statute. You've made that clear. We're dealing with the violation of a statute. So if I'm a respondent, are you going to tell me that I'm going to be participating in an inquisitorial model without my consent?

**Mr. Gottheil:** I know the words "inquisitorial model" have been used. First of all, the powers that would be granted to the tribunal, if reforms in Bill 107 do proceed, certainly are a matter for the Legislature to decide. The tribunal doesn't determine its own powers, the powers of the tribunal; the tribunal is a statutory decision-maker and has those powers, and only those powers, that are granted to it by the Legislature.

Within the framework, the tribunal—and this is common amongst administrative tribunals. They design processes that are appropriate to the nature of the cases and the nature of the parties that appear before them. When we talk about the inquisitorial, our early thinking on this is not to adopt a European inquisitorial model. I would frame it more as an informed, expert and activist adjudicator, an adjudicator who hears from the parties and in a sense consults with the parties on an application and says, "All right. We understand the complaint. I understand the defence here. What are the legal issues that need to be determined and what evidence do we need to hear?" as opposed to a traditional model which sits back, the adjudicator listens to it all and then in the decision, 10, 20 or 30 days later, says, "These 10 witnesses—irrelevant." So you decide those issues upfront, after hearing from the parties.

**Mr. Kormos:** I suppose I'm speaking to you about this in the context of the tribunal's ability to make its own rules as well as the regulatory standards that will be made, not in the legislative chamber but in cabinet, and the ability of the tribunal to exempt itself from the Statutory Powers Procedure Act. Which parts of that act would you consider it necessary to exempt the tribunal from? Because the bill is giving you the power to make rules that exempt you, that indemnify you, that relieve you of any responsibilities under the SPPA.

**Mr. Gottheil:** Right. What I would say is that the SPPA, the Statutory Powers Procedure Act, is a piece of legislation that's 40 years old that was designed to set the framework for a very traditional judicial model.

**Mr. Kormos:** Mr. Zimmer is older than that.

**Mr. Gottheil:** Many tribunals are in fact not even covered by the SPPA. Other tribunals, in their constituent statutes, have provisions similar to the one that is pro-

posed in Bill 107. All tribunals, regardless, are subject to rules of natural justice, whether or not the framework under which they operate is the SPPA framework.

**Mr. Kormos:** But what parts of the SPPA would you yourself consider necessary—

**Mr. Gottheil:** I suppose I'm having difficulty answering your question because our model that we would eventually come up with if Bill 107 was passed is in large part dependent upon the product of our community consultations of what's appropriate.

1110

**The Chair:** Thank you very much. The government side?

**Mr. Zimmer:** Why do you feel that the direct access model, which contemplates giving carriage of an individual complaint rather than the broad, systemic complaint—why this direct access model of giving carriage to the individual complainant is faster, fairer for the individual complainant as opposed to the broad, systemic—what's the magic in giving the carriage of the complaint to the complainant?

**Mr. Gottheil:** The perceived benefits or the objection to direct access is really not something within the—it's a policy question that I know has been debated both outside and inside this chamber, and it's not really for the tribunal to take a position on whether direct access is a good thing or a bad thing. From the tribunal's perspective, I think what would be important is that if a direct access model were to be adopted, that should be managed by the tribunal to enhance and advance those core values that I was talking about and ultimately achieve the objects of the code.

**Mr. Zimmer:** My second question is, if the legislation is passed and we move to a direct access model, how will the workload and the volume at the tribunal in your view likely change, and are you ready for that change?

**Mr. Gottheil:** Well, it will change. We receive about 150 complaints a year now. We have two full-time adjudicators and a number of part-time adjudicators and we have five staff. Our sense is, if Bill 107 were to go through and direct access were to come into play, we would receive 2,500 or perhaps more—up to 3,000 or more complaints a year. So, obviously, just the size of the tribunal, the number of adjudicators, all of that, certainly would be impacted. Are we ready for it? We will be.

**Mrs. Elliott:** Mr. Gottheil, thank you very much for joining us today. I would just like to ask you a few questions, if I might, about the operation of the tribunal and the rules that can be brought forward by the tribunal. I can understand the view that you need a more flexible system to work with and that the traditional adversarial model doesn't necessarily work, but on the other hand you don't want to throw it open to any kind of practice. There needs to be some kind of basic fairness level, and that's what you're hoping to achieve with this. If the Statutory Powers Procedure Act is not to apply to the situation, can you envision situations where, if it's not stated in the legislation that both of the parties have to

agree to whatever format is going to be used for a hearing, there would be challenges to that which would further backlog the system?

**Mr. Gottheil:** As I mentioned before, there is a wide range of tribunals that operate that are administrative decision-makers and not subject to the SPPA. They are nonetheless subject to the natural justice rights of the common law. Certainly, as I understand and what I've seen of the amendments that were proposed yesterday, that directive, if you will, is made explicit, that the tribunal, its processes and the rules it would develop would have to be designed for the purpose of achieving a fair, just and timely resolution on the merits. So I think that's in some ways stronger than the SPPA.

The other part, to answer your question, is that when we talk about flexibility, we're not talking about arbitrary decisions of an adjudicator; we're talking about the ability of a tribunal to create rules which are created in an open and public way through consultation, which are transparent because they are published and known to the parties; guidelines and information bulletins which are known and transparent. It's within the context of those guidelines that the discretion is exercised.

**Mrs. Elliott:** But if I can just refer to the amendments, they do indicate that the tribunal shall adopt the most expeditious method of dealing with an application on the merits. But I guess the question would be, expeditious to whom? And what happens if the complainant doesn't want that mode of dealing with it? On the face of it, the tribunal is sort of a one-sided thing. The tribunal decides, and that's it. I can just see the possibility that that could lead to all kinds of other problems down the road.

**Mr. Gottheil:** As I understand the amendments, first of all, the tribunal shall dispose of an application or make rules in a way that ensures it is not just expeditious but fair, just, on the merits, which is quite specific. If I recall, the amendments also provide that no application would be disposed of finally without providing the parties an opportunity to make oral submissions. So I think there are quite stringent procedural requirements to protect those rights.

**Mrs. Elliott:** If that's the case, is there merit in specifically allowing the tribunal to opt out of the SPPA? Why not keep it, if the basic rules of fairness are going to apply in any event?

**Mr. Gottheil:** Because the rules of fairness, in the sense of natural justice and the common-law principles of providing parties an opportunity to be heard and ensuring that decisions are made on the merits rather than on technicalities, are principles that can be advanced with or without the SPPA. In fact, there are a lot of tribunals that deal with parties that are not regular users of the legal system, and that's an important factor. The Legislature has determined it was appropriate to provide the tribunal with alternative ways of approaching dispute resolution, and the Legislature has recognized that in those cases a very formalistic, judicial-like model, which is the model envisaged by the SPPA, is not appropriate in those circumstances.

**The Chair:** Thank you very much.

1120

## WOMEN'S EQUALITY RIGHTS ORGANIZATIONS AND INDIVIDUALS

**The Chair:** The next presentation is from Sanson and Hart.

**Ms. Geri Sanson:** Good morning. My name is Geri Sanson. I am actually here on behalf of myself and a whole host of organizations. I hope everybody at this point has a copy of our written submissions.

I'm going to begin with just a little bit about myself. I'd like to say, first of all, that I'm incredibly excited to be here and feel it's a great privilege to be able to share my experience in the work I do in the context of this fantastic reform initiative. The second thing I'd like to do, because I think it has gone unspoken for the most part, is to appreciate this government for having the guts to undertake this initiative. It clearly has not been a popular thing with respect to the equality rights community. It is long overdue. Those of us in the equality rights communities have been advocating for reform for far too long, and I congratulate this government for having the guts to do this.

In terms of who I am, I'm proud to be a private bar lawyer and very proud to be doing the work I do, which is human rights, labour and employment law. I also want to say that prior to opening up my own private practice, I served as counsel to the Ontario Human Rights Commission for a number of years. I was very passionate and excited about that work but felt, in terms of opening my practice, that there was more proactive work to do and a better way of resolving claims.

I also want to say that I have, in my private practice, been involved in a number of cases all the way to the Supreme Court level. In particular, I have also served as counsel with a number of equality-rights-seeking groups at three inquests dealing with gender-related violence. One in particular, which I'm going to speak to you about today, was the inquest into the death of Theresa Vince. She was shot to death in her workplace after a long period of sexual harassment.

I want to talk to you about who we are. We are the following organizations: the Atlohsa Native Family Healing Services; the Bulimia Anorexia Nervosa Association; the Centre for Research on Violence Against Women and Children, which is housed at the University of Western Ontario; the Chatham Kent Women's Centre, which is a women's shelter; Guelph-Wellington Women in Crisis, which has both a sexual assault centre and a women's shelter; the Ontario Association of Social Workers, who see this as an issue of access to justice with respect to the clients they serve; the Sexual Assault Centre of Brant; the Sexual Assault Centre of Hamilton and area; the Sexual Assault Centre London; the Sexual Assault Centre for Quinte and District; the Sexual Assault/Rape Crisis Centre of Peel; the Sexual Assault Survivors' Centre Sarnia-Lambton; Timmins and Area

Women in Crisis; the Toronto Rape Crisis Centre/Multicultural Women Against Rape; the Woman Abuse Council of Toronto; the Women's Sexual Assault Centre of Renfrew County.

There is also a group of individuals which includes myself; Martha Glover, a woman who experienced sexual harassment and has a story to share about her experience with the commission; Colleen Pritchard, similarly an experience of sexual harassment and how that was handled in the system; Sharon Scrimshaw, a woman who also had an experience not unlike what you've already heard in terms of a mind-boggling adversarial process with the commission. We're talking about sexual harassment complaints. These are the ones that have been framed as the straightforward, fact kinds of cases; well, it's still taking four to seven years to deal with these, and then they're still not dealt with. The last person is Dr. Sandy Welsh. Dr. Sandy Welsh is a foremost expert on sexual harassment in the workplace. She is an associate professor at the U of T. She has been frequently called by the commission as an expert. She was called as an expert at the Theresa Vince inquest. She has done extensive research on the context of workplace gender violence and sexual harassment, and I'm going to be weaving some of that work into the context of my presentation.

There are detailed backgrounds with respect to the various organizations that are found in appendices A and B for your reading. The point I want to make about this is that these are front-line organizations that are representing the very individuals the commission is supposed to serve. These are members of every community across Ontario, so when they speak, they are speaking from that perspective. The communities that are served, as well as the individuals who work at these organizations, represent the diversity of the communities across this province. When we say there are two opposing sides, I want to be really clear that these are communities reflective of the disability community, racialized communities, First Nations communities—the entire ethno-diverse backdrop. This is the group of organizations I'm representing today.

I said I'm proud to be a lawyer. But I also want to say that my experience in the work I have done has been informed by the work I have done for some of these organizations and the women I have served over 16 years of doing this work.

I'm going to begin with a bit of the work I did at the Theresa Vince inquest. She was shot to death in 1996. She worked in the Sears store. It was well known to most that she was being sexually harassed. Nobody took it seriously. I served a coalition of interveners, which included the Chatham-Kent Women's Centre, the sexual assault centre, and the local Chatham and District Labour Council. One of the things that most struck me—and this was back in 1996—in terms of my quest for reform was the evidence of the commission that was called during the inquest. I need to say that Theresa Vince did not file a complaint, but I think most significant was the evidence

of the commission that said, "Had Theresa Vince filed a complaint, she would be dead. She still would have been dead before we got to her." Thus the quest for direct access. There is no process currently in Ontario that gives women the immediate access to a hearing and an immediate remedy.

What we know from the work of Dr. Sandy Welsh—she conducted a review of all complaints, 14 years of sexual and gender-related complaints filed with the Canadian Human Rights Commission over a 14-year period. Here are some of the things she found: 70% of the women were no longer in the jobs they were in when they made the complaint. In addition to what we typically know as common forms of sexual harassment, there were specific violent aspects, including kicking, punching, and spitting. She also determined that, depending on the kind of workplace, the sexual harassment manifested differently.

Some of the other work she has looked at, in the context of the entire group of women who experience sexual harassment, is that roughly between 40% and 70% of all women experience some form of sexual harassment—40% to 70% of women in their lifetimes will experience that. Now, add that to the intersections of racism, ableism and other forms of oppression, and women do not have a chance in this workplace unless we can deal with sexual harassment in an immediate and remedial way.

#### 1130

Dr. Welsh's work has also told us that of the 40% to 70% of all women who are sexually harassed, roughly only 10% of those women actually come forward. That 10% can come forward in a variety of ways. They might come forward internally, to their employer, they might come forward in some kind of alternative complaint resolution process, or they might go to a human rights commission or some other form of legal action. But the thing that is most telling—of that group, only 10% have that courage to come forward, but they only come forward as a last resort. Women will use every other method of coping with that experience of violence or sexual harassment, and only as a last resort will they come to a place like the commission.

When you're talking about the ways in which the commission needs reform, when women come they need to have their claims heard, they need to have them heard by the decision-maker, and they need immediate relief. They cannot lose their jobs, or worse, die while they're waiting for this province to do something.

I want to talk a little bit about the inquest, and I really want to appreciate Pat Hoy for his work in this area. This was during the Conservative government, particularly because they were looking at a review of the Occupational Health and Safety Act and because there was already a mechanism in place for direct access. The coalition put forward a number of recommendations, many of which I don't think were ever implemented. One of the things we pushed for were changes to the Occupational Health and Safety Act, to see it included as workplace danger, because that gets you an immediate

order and/or a tribunal hearing, so it gives you immediate access. Well, of course that never happened.

Subsequent to that, both my clients and the daughters of Theresa Vince worked with Pat Hoy. He made a commitment and a promise and in 2001 introduced a private member's bill, Bill 78, to specifically do that. I believe Mr. Hoy reintroduced that very steadfastly on a number of occasions. I'm flattered to see the most current generation of that coming from the NDP. I understand there is a more recent version of that by Andrea Horwath.

Just a little explanation: We did that because it was clear there was not going to be any reform to the Human Rights Code. We did that because there was already a legislative mechanism in place that would give women the direct access they needed. As a model of preference, sexual harassment and gender violence is an equality rights issue for women, and this is what these equality rights groups are saying. It's a fundamental equality rights issue.

Women need one place to go, not to be given the runaround, not to be sent here or there or told they should have their claim dealt with elsewhere. They need one-stop shopping in terms of getting their needs met. In that regard, I see this private member's bill coming from the NDP as great. It supports direct access, so I don't get the debate; I don't get a lot of things about this debate. But let me leave it at that.

I want to talk about our position in terms of the women's equality rights organizations. We support Bill 107 because all individuals should have the right of direct access to a tribunal hearing and timely relief. I have to say, this is non-negotiable, completely non-negotiable. This has come from generations of front-line workers and the experience of the women themselves in the process, that they want direct access. And this is across the board.

We've heard a lot about the delays and we've heard a lot about the problems that the delays create. Dr. Welsh did some work in terms of looking at the actual independent and additional harms that are created for women experiencing the commission process. In addition to the initial harm, we're also seeing harm created by the process itself, and that's another reason that we need direct access. But for women, apart from the delay—and you've heard lots about that—this is an issue of empowerment. This is something that the women's movement refers to as agency. That means they do not want a paternalistic, patronizing, anachronistic process which is going to say, "There, there. We'll tell you what's good for you." They want the right to make their own choices and decisions, they want the right to control how their case is managed, and they want to right to be able to speak directly to the decision-maker.

The other piece we've heard quite a bit about today is this piece about transparency and accountability. If it wasn't so sad, I would laugh at this notion that we're moving to a private process, when in fact I would say the existing process could not be more private, where 96% of all complaints at the commission are disposed of in some manner behind closed doors—in secret, in private. When

I was commission counsel, I had the privilege of hearing a judge refer to that process as the star chamber, where decisions are made in secret. And unless you judicially review the commission, you don't get to know who those decision-makers are; you don't even get to know that. They've also moved to a place where you don't even get to know who wrote the case analysis, so you've got these faceless investigations being done as well. You also have this process whereby, even after the commission or the investigator does the report, there's this sort of quality control where they remove parts of the case analysis, where they actually change the recommendations. We've only found out about this because the investigator mistakenly gave us their findings in the first place.

So direct access is really, really important. As I said, it's not negotiable. There can be disagreement about that, but this process will not be acceptable unless women have the right to direct access to a hearing.

The second piece is adequate legal supports. Again, what a fallacy that there's actually any kind of legal support for women in this existing process. You don't even get your complaint drafted by the commission any more; I don't know if people are aware of that. This idea that, if you're one of the lucky ones whose case actually gets to a tribunal, you're going to get a commission lawyer—well, let's talk about that, because the commission went to the higher courts to get the right to actually sit down on cases. So continuing that paternalistic process, after the tribunal is appointed and the respondent comes up with some kind of remedy, the commission can force the claimant to accept it or they'll sit down, leaving them without any representation whatsoever. So we need to disabuse ourselves of the notion that there's actually legal representation in the existing process.

One of the pieces of work that Dr. Sandy Welsh did—and it's really cool, because she's done a lot of cross-sectoral research. She's combined her own research with actually going out and interviewing women across all segments. In terms of what women most need, what she found was legal support and other supports in the context of bringing their claims. This was with the existing system, that one of the fundamental things was that legal supports were not available for women. So I think that's a fundamental.

1140

I want to talk a bit about legal supports. I'm really thrilled to see that we're going to see language that actually mandates those legal support centres across the province. I think we need a system of combined supports, and legal support centres is one of them. I would like to recommend on behalf of the organizations I serve, particularly the sexual assault centres and women's shelters that are actually serving women on the front line, that you consider housing some of those advocates and lawyers at the actual centres where women come for help.

I've covered off the first two, and these are the most fundamental. And we heard yesterday that we've gotten rid of user fees.

The right of third party applications: Organizations who represent the disadvantaged need to be able to bring complaints on behalf of individuals when they cannot do so themselves. Right now, organizations can bring their own complaint, but we would hope to see the ability of an organization, when somebody is vulnerable and unable to bring it on their own, to do so.

The fifth piece: We support a vibrant commission that has the ability to be a strong public advocate of human rights and that is empowered to act and eliminate broader societal discrimination.

I see those components and I see, in taking a look at what the government has done, that they've moved a long way, and I think that's really important. People have been crying out for these amendments, and they're listening. I heard some of the submissions yesterday. People are crying out for amendments, and when you announce them you get in trouble for announcing them at a particular time. I just don't know.

The last piece talks about submissions that were already made. You'll see that Chatham-Kent Sexual Assault Centre has made their submission as well as the Faye Peterson House, the Association of Human Rights Lawyers, the daughters of Theresa Vince. The Ontario Association of Interval and Transition Houses: I think those submissions were available in writing today; I'm not sure whether they're actually appearing or not. That's another body supporting, I think, approximately 75 women's shelters that support direct access in adequate legal services.

How much time do I have left?

**The Chair:** You have about six minutes left.

**Ms. Sanson:** Six minutes? Okay. I'm going to comment on just two things in terms of the technical piece, and then hopefully I'll have a couple of minutes for questions.

The first thing I want to do—and this is only because it's come up. On the perennial question of the Statutory Powers Procedure Act: There was a recent case in Divisional Court, the kind of example where you want a tribunal with flexibility, a tribunal that's more interventionist, a tribunal that does that work of gathering the facts so that the claim is heard. The tribunal looked at the matter and said, "Okay, I want X, Y and Z witnesses to come." The respondent went off to Divisional Court, and the court said, like in a traditional adversarial process, "Uh, uh—SPPA. You can't do that, Tribunal. You can't make a decision about calling witnesses." So that's not to say that the SPPA will not apply, but that the tribunal has the flexibility to make its own rules that will take precedence over that. The example I most think of is the Ontario Labour Relations Board. It's one of the most well-respected tribunals in this province, and the SPPA doesn't apply to that. So the amendments we saw yesterday, particularly in terms of a fair, just and expeditious resolution and no dismissal of any claim without an oral hearing, are great improvements.

The last piece is on the appeal process. Women, in terms of the submissions that have already been made,

don't support a right of appeal for a couple of reasons. The first is that women are talking about housing, loss of jobs, money—immediate help. They don't want to be caught up in a process where their claims are in limbo for years while there's some intricate point of law being challenged.

The second piece is that, based on my review of decisions, it seems to me that it's more often the case that the tribunal makes the progressive decision, it gets overturned by one or two courts above, and then you have to go all the way to the Supreme Court of Canada to get the tribunal decision reinstated.

The last piece is, as we know, even with a privative clause, there is always the ability of the court to review judicial reviews, so that protection is always there. So I don't support an appeal.

I hope there's time for any questions.

**The Chair:** Just a quick question for each side, a little less than a minute.

**Mr. Pat Hoy (Chatham-Kent Essex):** Thank you for your presentation on behalf of all of these organizations and groups, many of whom have volunteered time beyond what might be in their workplace, but certainly have volunteered a lot. I am thankful for the Vince family, as well as Michelle Schryer and a host of others, yourself included.

You mentioned the Occupational Health and Safety Act. Given what we know today and see before us at this committee—I'm not restricting you from now until the end of time or anything like that—is there a need to pursue remedies under the Occupational Health and Safety Act, knowing what we do about this bill today?

**Ms. Sanson:** It certainly can't help to have that extra coverage. Clearly sexual harassment and violence in the workplace are a workplace danger. It's an occupational health and safety issue for women when we know that the result is that 70% of women are not working any more or are changing jobs when it happens. The difficulty with that legislation is obviously—and I think you've probably heard it—in terms of expertise. Occupational health and safety people under the legislation don't have that human rights expertise. My worry is that we're going to create one more duplication of process.

Take a look in terms of the stories that are here. Sharon Scrimshaw was sent everywhere. The commission wouldn't take her case, and this went on for 10 years—again, sexual harassment. That's my worry. I would like to see it enshrined in the code. That's where it needs to be. Let's do it now. It's on the table.

**Mrs. Elliott:** With respect to your comments that this bill is about empowerment of women, which I think we would all acknowledge and agree with—any changes to the human rights system should empower all people coming before it, including women, of course. But with respect to your other comments about not really wanting to be hidebound by the SPPA and some of its conventions, that the tribunal should be able to be more interventionist, it seems to me that is almost paternalistic in itself. It's taking control away from women to decide

their own cases if the tribunal can step in and say, "No, I don't think you should do it this way. I think you should call this, this and this witness." How do you reconcile that empowerment issue with respect to the tribunal's proposed rule-making authority?

**Ms. Sanson:** Just to give you an example—and this is typically what I have seen happen in some of the cases—

**The Chair:** Can we just get a quick response to that? We have to move on.

**Ms. Sanson:** Okay. I think it is about empowerment. One example is this cross-examination of sexual harassment victims that currently goes on for days. The tribunal thinks they can't stop it because of this right to cross-examine under SPPA. Stopping that will empower them.

**The Chair:** Mr. Kormos, quickly please.

**Mr. Kormos:** Gosh, yesterday Barbara Hall and I had common ground for once when she called on the government to include a right to appeal. Now you are destroying the little bit of a relationship that Barbara and I have, so you have to live with that.

I listened to Ms. Payne today and Mr. Razack. We've heard those same stories in our constituency offices. The commission is not a huge organization; it really isn't. There isn't a huge number of staff. You've got chairs: Barbara Hall; her predecessor, Keith Norton; Ms. Wilkey spoke to it as well; Rosemary Brown; Catherine Frazee. These are the immediate supervisors of these people. Where does the incompetence or corruption lie? With these chairs? Seriously, they're not that far removed. We hear these horror stories of incompetence. At the very least, where are the chairs? Where have they been? You worked there. Mark Hart worked there.

**Ms. Sanson:** Those are your words, not mine. I think there is a huge, committed staff at the commission who are totally committed to human rights. We are operating in an anachronistic process that is designed to gate-keep and to process claims, as opposed to actually hearing and determining them on their merits.

**The Chair:** Thank you very much.

1150

#### ADVOCACY CENTRE FOR TENANTS ONTARIO

**The Chair:** The next presenters are the Advocacy Centre for Tenants Ontario. I just want to remind everybody that we do have a sign language interpreter here. Good morning. If I could have your names before you speak for Hansard, that would be good.

**Ms. Kathy Laird:** I just told Mr. Kormos that I brought all these people because he asks such scary questions. He promises me he's reading our submission down the hall—I didn't want to know any more than that—and he'll be back in a moment. So I'm going to introduce everyone.

**Mr. Zimmer:** The scary questions come from the staff.

**Ms. Laird:** Okay. I'm Kathy Laird. I'm presenting here today on behalf of the Advocacy Centre for Tenants

Ontario. We're a legal clinic that does human rights advocacy on housing issues in a variety of legal, political and policy forums, including before the Ontario Human Rights Commission.

I'm also here today to speak on behalf of the 55 community legal clinics that support Bill 107. In the materials that I have provided you with today, you'll find a letter from those clinics to the Premier. You'll also find the joint submission you already received from clinics in Ottawa and Thunder Bay. As well, you'll see a myths and realities chart which you may have seen previously. Everyone is using that title. You're getting a lot of these myths and realities documents. I've updated this to try to reflect the announced amendments yesterday.

Because I'm speaking for a broad group of community legal clinics and because we represent a broad constituency of low-income Ontarians, I brought with me today some of my colleagues to assist with questions at the end of the presentation, and I'll introduce them.

I have them in the wrong order. First I'll introduce, from that side, Michelle Mulgrave. Michelle was a tenant organizer at the Federation of Metro Tenants' Associations before becoming manager of human rights intake service at the Centre for Equality Rights in Accommodation, CERA. Michelle is now working with us as a tenant duty counsel, but while at CERA, Michelle assisted hundreds of individuals and families experiencing discrimination in housing. So she brought here today her experience from the front lines, helping disadvantaged individuals who had enormous difficulty using the current system. I hope you'll have questions for her.

Next to her is Consuelo Rubio. Consuelo was a community legal worker. She comes from the Centre for Spanish Speaking Peoples. Consuelo, like all clinic staff, is employed by a community board of directors. Her board endorsed the letter to the Premier, which you have. Consuelo has extensive grassroots experience for over 20 years in representing marginalized individuals in the human rights process. Consuelo will maybe have the opportunity to appear before you again, but she came today to answer any questions because her clinic has signed the letter to the Premier.

Also with me is Grace Vaccarelli. Grace is currently on loan to ACTO, to my organization, from her home position at Kensington Bellwoods Legal Clinic. Grace has handled numerous human rights complaints on behalf of low-income workers and tenants and she also will be happy to answer your questions.

Finally, I want to introduce Phyllis Gordon, who is to my immediate left. Phyllis is the executive director of ARCH Disability Law Centre. ARCH is named at the top of the list of clinics on the letter. Phyllis has a lengthy legal career, including being the director of Parkdale Community Legal Services. She was the chair of the pay equity hearings tribunal. She was my chair when she was at the tribunal. Phyllis has been a commissioner of the Canadian Human Rights Commission. She has lots more things that she's done, but we don't want to use up all our time in introductions.

I want to tell you a little bit more about my experience. I'm mindful of Raj's joke yesterday about how he didn't just come to share his CV with you, so I'm going to keep it really brief. But I want to let you know that I have experience as a policy advisor to the commission in the late 1980s. During that time, I was seconded by the NDP government to prepare the cabinet submission for the Cornish inquiry, and then I was again seconded to prepare the new rules for the brand new human rights board of inquiry that was set up at that time. Then I served as counsel to the first three chairs of the board of inquiry before being appointed as a vice-chair to hear and decide human rights cases, as well as pay equity cases and, for about a minute and a half, employment equity cases.

I want to start by telling you why so many, many community legal clinics support this legislation. They support the legislation even though it means more work for them and no more money for them. Peter Kormos yesterday mentioned the Thunder Bay clinic, Kinna-aweya Legal Clinic. He mentioned that the clinic is under-resourced and overworked, and I know that to be true. But he neglected to also remind you that the clinic supports these reforms. I'm going to remind you of that by telling you what Kinna-aweya said in their presentation, and I'll do that briefly: "Kinna-aweya Legal Clinic supports Bill 107 because, for the first time in Ontario, human rights claimants will have the right to take a discrimination complaint to a hearings tribunal without first having to undergo a lengthy and delayed process to obtain permission from the commission.... As you know, the commission currently dismisses many more complaints than it allows to proceed to a hearing. The dismissals take place in a behind-closed-doors process, with the claimant never having the opportunity to tell their side of the story in an open hearing." I really don't need to read the rest of this because you've heard it so eloquently through previous speakers this morning, but clinics feel how patronizing this process is, and the clinic went on to describe it as "patronizing and alienating for claimants, who find it difficult to understand how it can be fair for their complaint to be dismissed without any opportunity to explain their story to the decision-maker."

They point out that the commission no longer has an office in Thunder Bay. I know you've raised the question of how legal services will be delivered outside of Toronto. I'm happy to talk about that later. But let's remember that under the current process, it has been a long time since the commission had regional offices. I often say that when I worked at the legal clinic in James Bay, we had a commission in Timmins and they came up to investigate whether the Polar Bear Lodge was discriminating when it assigned rooms to First Nations people. That was the kind of commission we used to have. We haven't had that for a very long time.

"Under Bill 107, our clients will have"—and this is still Kinna-aweya talking—"the same right to conduct their own human rights case as they already have in making any other kind of administrative or civil claim,

such as a claim for employment insurance, workers' compensation, social assistance....

"A claimant with a human rights complaint will for the first time be able to decide for themselves whether to proceed to a hearing or to mediation at the tribunal.... Once at the tribunal, the claimant will have carriage of their own complaint and will no longer have to sit back while the commission controls the conduct of the case before the tribunal."

That's what Kinna-aweya told you back in August in Thunder Bay. Then they went on to make the case for a number of amendments to Bill 107. I note that the Attorney General yesterday announced amendments in each of the areas addressed by the Thunder Bay clinic. I'm just going to name those. But I want to point out to Mr. Kormos and Ms. Elliott that this document you have been referring to—you've taken a couple of witnesses to the information on the left-hand side of the page. That's the current legislative language. I know Mr. Kormos referred to the proposed amendments as the "explanatory note column." That's actually the proposed. So when you've put to witnesses the language on this side, it's the wrong language. That's why, when Michael Gottheil answered the question about disposing of the application "on the merits," he took you to the new language, which is "fair and just." I just wanted to point that out as we have this debate.

The things that the Thunder Bay clinic, Kinna-aweya, asked for and which are addressed by the amendments, include:

- no application fees
- entrenchment of the legal support centre for claimants
- they doubled the so-called limitation period. It's not really a limitation period, but that initial period
- restoration of the investigation powers in the commission
- a broader right for the commission to launch its on applications and intervene in other applications
- a requirement of expertise and real human rights experience and even sensitivity to human rights issues. That's all built in as a prerequisite for appointments and at the commission as well
- new language in the bill, which I just touched on, to emphasize fair process.

I just want you to take a look at the joint letter to the Premier at tab A and to note that there are two pages of—

**Mr. Kormos:** Excuse me, Chair. That means we've got a vote.

**The Chair:** The bells have gone off, so we'll briefly recess for 10 minutes.

**Ms. Laird:** Will I be able to resume after you return?

**The Chair:** After 10 minutes.

*The committee recessed from 1200 to 1213.*

**The Chair:** This committee is called back to order. Sorry for the interruption. You have 20 minutes remaining, and you may continue.

**Ms. Laird:** What I was about to do was to take you to the letter we sent to the Premier, just to make sure that

you flipped through and saw that there were two pages of clinic names, in rather small font, from all over Ontario. The legal clinic system is made up of specialized legal clinics. ACTO would be an example of that. But you'll also see Downsview, Durham, Elgin-Oxford, Elliot Lake, Georgina, Grey-Bruce, Hamilton, the injured worker clinic in Huron-Perth, Justice for Children, Keewaytinok, up on James Bay, where I once hung out, Kenora, Kinnowaweya, of course, the Lake Country, Manitoulin, Niagara North and South both, London, Sarnia, Scarborough—I could go on. I won't.

The thing you should know about each of these legal clinics is that they operate under a community board of directors, and that community board is representative of the community—we're required to have boards that are representative—and generally includes community leaders and activists in addition to members of the disadvantaged communities that are served by the clinics and are protected by the code. So when a clinic endorses a letter like that and the attached joint submission, it means that some pretty active people in the community, including those people whose rights are at issue in this bill, have made a decision that this legislation is the right way to go forward. It's not just a bunch of lawyers.

I did hear Mr. Kormos say yesterday that it's obvious why lawyers support this bill. That's sort of been out there in the debate on this bill since the beginning. I have to say that this work, for any lawyer, is not lucrative, and it will be less so under Bill 107 because we now will have an entrenched legal service centre. But for clinic lawyers in particular it would just mean more work. But the clinic lawyers and their boards have supported Bill 107 anyway, and it's because their clients are shut out of the present system.

Maybe a middle-class person can wait for a complaint to wind its way through the current process. It's not good, but maybe they can do that. I don't think David Lepofsky would mind my saying that he waited for many years. He's a very experienced and skilled lawyer—a very persuasive person, I think you'll all agree—and he was able to retain his own lawyer for part of the process, I understand. David shouldn't have had to wait four years or whatever it was, but our clients can't wait at all.

When a low-income person, a person on welfare, is denied an apartment or denied fair treatment at a marginal workplace and when the issue is discrimination, they need human rights protection and they need it in a very timely manner. If they have to wait for justice, they will have already lost the opportunity to rent that apartment, they will have lost the job they applied for, the job opportunity, they'll have lost the job, they could have lost their housing. Our clients become homeless. We lose track of them. They move in and out of the shelter system. We can't reach them on the phone. They're forced to move on with their lives, and not in a good way. They won't be around for that complaint to go slowly through the system. The Supreme Court recently recognized this in a case that our clinic went up on. Poor people don't have time on their side. They need to get

justice in a prompt way. Their lives go on to face new, devastating hurdles, not just the discrimination.

Catherine said it so much better than I could, but what is important to people in these circumstances is direct access to a hearings tribunal, access to publicly funded legal services, a commission that will fight the systemic battles, the public interest battles, will intervene, launch applications and will educate employers and landlords and service providers and government. And we need a timely and accessible process at the tribunal, and that will not necessarily be a formal hearing with all the procedural rules under the SPPA.

I would be happy to talk about how, when I was at the tribunal, I often had hearings that I didn't have the tools to rein in. I had counsel who were keen on tripping each other up, keen on extending the hearing. I was at the mercy of the SPPA restrictions and the adversarial process. If the other counsel didn't object, it was very hard for me, very hard for any adjudicator, to cut things off.

So I say to you, if the tribunal is going to meet the challenge of the new legislation, they need the skills that other tribunals have. We go all the time to the workers' compensation tribunal. It's one of the best tribunals that clinics go to. That tribunal is not under the SPPA. I'd be happy to speak more about that later.

Finally, I put in your materials at tab B the myths and realities document. The stats in there are taken from the commission's website, so there's no glossing there; they come right off the website. This chart can be found in each of the annual reports except the last one. You'll notice at the bottom of the first page that I do the comparison of hearing referrals and dismissals. I think that's instructive.

The first year I give is 2000, the 73 hearing referrals. If you look back earlier, there are lots of years during the time that I was at the tribunal where 20 and 30 complaints only were referred to the tribunal for a hearing each year. In the B'nai Brith submission yesterday, they mentioned that the tribunal may get 70, 80, 100 complaints but only issues 20 or 30 decisions a year and suggested that there was a huge backlog at the tribunal. That isn't the case. The tribunal settles at least 70% of what goes there. We always have done that; they're doing it now. There is not any kind of backlog comparable to what you see at the commission.

**1220**

A couple of other things: I want to remark on how the number of referrals goes up and down. It seems to depend as much as anything on how the chief commissioner leads the tribunal in interpreting section 36. You couldn't have a higher threshold than the current statute for getting to a hearing. It's whether, in the opinion of the commission, the evidence is sufficient and a hearing is not otherwise inappropriate. I'm not sure if I should have checked the exact language. It's a wide-open, discretionary section. And you've heard people before you say that when you are turned down, you never know why; the reasons never tell you why.

I want to get to questions, but there are just a couple more things. Yesterday there was a discussion about a two-tier system, so I wanted to touch on that. Mr. Kormos suggested that we may be moving to a two-tier system under Bill 107, where some people have private lawyers and others are relegated to a publicly funded and—I missed part of your question, but maybe a backlogged legal services centre. Catherine Frazee has already dealt with this far more eloquently than I could, but I want to say a couple of other things about it. We already have a two-tier system. For example, 4% of claimants get to a hearing and 96% go into the process with no reasonable likelihood of getting to tell their story face-to-face to a decision-maker. We already have a two-tier system because some people can afford to hire their own lawyer and the rest hope the commission will support them at the hearing if they're lucky enough to get to a hearing.

Raj yesterday mentioned cases where the commission is on the other side of the claimant at the hearing. That does happen. I'm sure everyone in this room who does this work can give you an example of that. But really it's Stephnie Payne's presentation this morning that makes it clear that the experience of claimants is sometimes that they're up against the commission lawyers at every point in the process.

Then we have a two-tier system today for another reason. It's that some people can get their human rights issues adjudicated through the relatively fast, accessible and relatively informal labour arbitration process. If you're unionized you don't have to go through this commission process. If you're an OPSEU member, you don't have to go through this commission process. OPSEU has a process that lets their members go right to a hearing. Remember that. OPSEU members won't be stuck in this process. It's non-unionized workers, the really low-income people whom we represent, the people with housing service complaints, who are stuck in the commission process. So we already have a tragically two-tier system where the most disadvantaged people are at the bottom of the heap.

Under Bill 107, for the first time we will and can have, I believe, like Catherine, a commission that is a champion for human rights. Everyone will have access to the hearing tribunal, everyone will have access to publicly funded legal support, and everyone will be able to have their claims heard and decided at an oral hearing on the merits. You've heard the chair of the tribunal speak to that this morning.

So we urge you to pass Bill 107 with the amendments that the government has put forward. I just want to say something about investigation, because much too much, in my opinion, has been made in this debate about the importance of having a commission investigation. I want to remind you that the commission itself has been on record for a long time as wanting to have the discretion in the statute to not investigate. They recognize that many cases in fact do not require an investigation, notwithstanding that every case gets lined up for investigation. I

also note that the blueprint for reform issued last week also recommends that a claimant should be able to waive an investigation, again recognizing that not every case needs an investigation. But more than that, I want you to ask Consuelo about some of the investigations that she has seen, when the investigation consisted of only a few phone calls by an investigator and then resulted in a dismissal decision with no real reasons. I think she will tell you that her clients would have been happy to waive the investigation for a chance to tell their story.

I think I'll stop there. We have time for questions. How much time is left?

**The Chair:** About three minutes for each side.

**Ms. Laird:** I think it's a little longer, isn't it?

**The Chair:** No. Ms. Elliott?

**Mr. Kormos:** How many lawyers do we have here?

**Ms. Michelle Mulgrave:** I'm not a lawyer.

**Ms. Laird:** There you go. Ask her.

**Mr. Kormos:** You've got at least four lawyers there.

**Ms. Consuelo Rubio:** You've got a lawyer there too.

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** I'd just like to ask a question with respect to the amendments that were announced yesterday by the Attorney General, particularly with respect to the legal support centre. We haven't seen the full text yet, but with respect to the language we have in the proposed amendment, are you satisfied with that language? Do you think that is all that we need to see by way of amendments, or is there anything else you would like to see included?

**Ms. Laird:** We're looking at the right-hand column. It's not legislative language, but we want to see a "shall." That's the implication, that's what this says: "The minister would establish..."

**Ms. Phyllis Gordon:** If I might quickly answer, I agree with Cynthia Wilkey this morning. It certainly was part of ARCH's initial submission that the statute should also provide that there be a review of the resourcing of the centre after a certain period of time, because we can't really tell at this point what the requirements are. Otherwise, I think the language, in this form, looks okay.

**Mrs. Elliott:** I guess we won't really know until we see the actual text of the language.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** I don't think anybody was confused about the damage control document that the minister came forward with yesterday. It's one thing to say that, for instance in section 41, all the paragraphs are going to be deleted except paragraph (g). It's another thing to say, as in section 46.1, that this is the section that stands, with no suggestion that anything is going to be deleted.

Let's get to the funding, because you're right. You were up in James Bay. You know how desperate people are up there for resources. I found your observation interesting that the commission came out from Timmins to investigate on James Bay. What a remarkable, novel proposition. But I am worried about the funding. Offices of the Worker Adviser—is that going to be the model? Offices of the Worker Adviser down where I come

from—legal clinics don't do that work because the OWA is there—have two-year backlogs.

**Ms. Laird:** We all worry about the funding. I'm not saying we're not worried about the funding.

**Mr. Kormos:** Let's talk about it, then. What good is it for us to be spun, like we were yesterday, when there is no suggestion of a single new penny, as compared to using money that's already in the system? And the system is already starving.

**Ms. Gordon:** One thing we don't know is what the changes will mean for the current system. So when Catherine Frazee and Commissioner Hall talk about the critical role of systemic complaints and inquiries, if that work can happen and go forward I think a lot of human rights complaints will get dealt with in a systemic way; from a disability point of view, it would be a barrier-removal way. Fundamentally, that would then make a lot of future complaints unnecessary.

So I find it really hard to estimate. We're really hopeful that the systemic part does its job. We can't measure at this point. Do I agree that more funding is needed? The whole system could certainly do with an influx of a lot more money. But I go back to what Raj said yesterday, which was that when he had 50% more without changing the system, it didn't make any difference.

**Ms. Laird:** I want to mention legal costs; I forgot to mention that. There was a question yesterday. There is no provision in this bill for legal costs to be ordered against a party. The only place that exists is in the SPPA. The SPPA allows a tribunal to order legal costs, but only if it creates rules for that purpose. This tribunal doesn't have rules for that purpose. There's been no suggestion that they would. We appear in front of tribunals all the time that can make rules for legal costs and don't.

**The Chair:** Any questions from the government side?  
1230

**Mr. Zimmer:** I've been listening to the hearings now for several days and throughout the summer, but I was caught by an expression you used that, at least for me, summed up everything rather succinctly and poignantly. The people you find your clinics dealing with are often poor people, disadvantaged people, people living their lives on the edge, with great amounts of anxiety in their life, and you used the expression that these people don't have the luxury of time. They don't have the luxury of two or three of four years. You used the example of Mr. Lepofsky and others, middle-class people who have the luxury of time and circumstances where they can engage lawyers and see these things through. The folks you're dealing with need a result, a solution, a resolution tomorrow, in effect. It seems to me that the whole philosophy of the direct access model is to balance off that absence of the luxury of time and get on with the complaint so they can relieve their lives of some of that anxiety, that pressure, that sense of always living on the edge. Your expression that they don't have the luxury of time is a good expression for me that captures it all. Thank you.

**Ms. Laird:** I think Ms. Rubio wants to respond to that.

**Ms. Rubio:** Kathy mentioned in her brief that in the course of my work—she said I had been at my work for 20 years; it's actually 28 years, so almost approaching 30. I have seen many of the people you referred to, I don't know whether on a daily basis, but at least three times a week: people who lose their jobs because of discrimination and, because of that, basically lose their lives; people who feel suicidal, women who feel suicidal after having been sexually harassed at work and finding that the commission has provided no forum at all, never mind an appropriate forum, so they can air their complaints and have their complaints investigated; people who lose their apartment; people who cannot buy medication for their children because they have lost their jobs, and their children end up particularly sick because they have lost all supports they might have because of discrimination in the workplace.

While I agree that this might not provide a perfect system, I'm reminded of what Ann Landers used to say about whether we will be better off with this or with that. What we have now is untenable. For that, I'm prepared to give the new system a try.

**Mr. Kormos:** Chair, that surely is the first Hansard-reported parliamentary reference to Ann Landers that's occurred in at least 20 years.

**Mr. McMeekin:** What was it Ann Landers said? I wasn't sure I caught it.

**Ms. Rubio:** What Ann Landers said—she was actually referring to relationships and that women should ask themselves, "Am I better off with him or without him?"

**The Chair:** Thank you.

**Mr. Kormos:** Are you sure that wasn't Dear Abby?

## ALLIANCE FOR EQUALITY OF BLIND CANADIANS

**The Chair:** The next presenters are the Alliance for Equality of Blind Canadians. Good afternoon, sir. You can start any time you like.

**Mr. John Rae:** Good afternoon. Mr. Chairman, could you please let me know when I'm about 15 minutes in?

**The Chair:** Absolutely.

**Mr. Rae:** That would be very helpful. I appreciate that.

Mr. Chairman, members of the committee, my name is John Rae. I appear as national president of the Alliance for Equality of Blind Canadians. We are a national not-for-profit organization whose work focuses primarily on public education and advocacy.

For myself, I have been a human rights advocate for over 30 years. I worked for the Ontario public service for 24 years before retiring last year. I have two complaints currently before the Human Rights Commission and am assisting other complainants both at the Ontario commission and at commissions in other parts of the country. I provide you those brief snippets of my background, and I will connect them later in my presentation.

I must begin on a sour note, I'm afraid. Yesterday I sat in this room and listened to the presentations. Your first witness, Toni Silberman, said she would come away

from this proceeding feeling ambushed—yes, ambushed—and I understand why she would have those feelings. Why did the Attorney General wait until yesterday to announce his proposed amendments? Why could he not have treated both you, as honourable members of the House, and us, as deputants before your committee, with some greater degree of respect and at least announce those amendments last week?

This bill was introduced in April. You have heard from witnesses from Ottawa, Thunder Bay and London. They got to speak about the bill as it was. We in Toronto seem to be a bit more fortunate. If we have the chance, we get to speak to the bill as it might be. Will people who come before you in December or January get to speak about the bill as it might be then? I submit to you that if I were a resident of Ottawa, Thunder Bay or London, I would be very upset that I didn't have the benefit of the minister's proposed amendments at the time I appeared before you.

But I came away from yesterday's experience feeling far worse than Ms. Silberman—yes, far worse. I came away feeling demeaned, discriminated against, in fact blindsided—yes, blindsided. I know that's a harsh term. That's how I came away feeling yesterday. That's because the minister came before you with some documents in print. I suspect those documents were produced electronically, but he didn't bring an electronic version and he didn't bring any Braille copies. He just brought print. I'm afraid, I must admit, it has been many years since I've been able to read the printed word. I was scheduled to present to you today, and I'm honoured to be here. That's not good enough treatment from the minister who has the responsibility to promote and advance the cause of human rights in this province. That is not good enough. It just is not good enough.

I must admit that instead of spending yesterday afternoon focusing on my presentation today, I spent a fair bit of yesterday afternoon thinking about how I was going to respond to the indignities I came away feeling yesterday. I came up with three ideas. One was to come before you and demand the resignation of the Attorney General. Second was to phone the Human Rights Commission and file a complaint of discrimination against the minister. But I'm a reasonable man, and I came up with another idea. I would particularly ask, Mr. Zimmer, if you would be so kind as to convey this to the minister: What I want is for the minister to rise in his place in the Legislature between now and the close of business next Friday and issue to me, John Rae, president of the Alliance for Equality of Blind Canadians, a public apology for the way in which I was treated here yesterday. Otherwise, I guess next week I'll be phoning the commission and lodging yet another complaint, but I'd rather not do that.

Okay. That takes care of me—for the moment.

1240

Let's then move on to the bill. A number of proponents have suggested that the commission, in its current form, is very flawed. Some have even suggested that those who oppose Bill 107 are attempting to maintain the

status quo as it is now. That is not true. I think many people on both sides feel that the commission could be improved. I dare say that if we went out on the streets of Toronto and asked 100 citizens how they feel about the Ontario Human Rights Commission and whether they think it could be improved or its work streamlined a bit, I suspect a fair number might say yes to that question. I also wonder, if I asked those same 100 people if the work of honourable members of the Ontario Legislature might be a improved a bit or streamlined, what those same 100 people might say as well.

What is my point in all this? It's very simple. When human beings are involved in an institution, it may not be perfect. Here is where the real flaws occur: There may be some problems with the Human Rights Commission, but the greater flaws are with the way in which the minister has conducted whatever consultations he has conducted and with the bill itself. It's Bill 107 that's fundamentally flawed—fundamentally flawed.

What do I mean by all of this? The minister says he has conducted extensive consultations. I want to know with whom. I want to know with whom in my community he has consulted. I know he has talked to the AODA Alliance. That's good. But who else has he consulted? I know that I, as president of my organization, have written to him at least three times asking questions, seeking clarification and raising concerns. I remember that when I worked in the Ontario public service we were expected to turn around ministerial correspondence in no more than 48 hours or we caught lots of hell. And that's not unreasonable. I want Hansard to show what I'm showing to the committee, and that is a pair of empty hands. Why am I doing this? It's very simple. I have received neither acknowledgement nor a substantive response from any of the correspondence that our organization has sent the minister, nor were we invited or given any opportunity to consult. So who has he consulted with? Who has he been consulting with? I ask that question and I really do want to know.

On the kind of treatment I received yesterday, maybe I should have considered excusing it as simply an aberration or as something forgotten about. If it were a first circumstance, perhaps I might, but yesterday simply reinforces a pattern. I remember in the days before Bill 107 was introduced that the minister committed to the AODA Alliance that they would receive at least 48 hours' notice of the bill's introduction. That is because, for some persons with disabilities, getting transportation, getting to this wonderful building, is difficult. And what happened? Yet another promise broken. The alliance was given less than 24 hours.

This, members of the committee, becomes even more ironic in the current context, because less than three weeks ago, a sister ministry, the Ministry of Community and Social Services, released the first standard under the Accessibility for Ontarians with Disabilities Act. Some of us think that standard was a long time in coming, but that's a discussion for another table. Do you remember what the subject was of that first standard, members of the committee? How ironic. It was customer service.

Where was my customer service yesterday? I think you can understand why I feel so disillusioned, discriminated against and so upset over the treatment I received yesterday.

Some of you may be surprised at how adamant some members of the disability community are about Bill 107. This may surprise you; I think I could understand that. Let me explain. Persons with disabilities were not included when the Ontario Human Rights Code was first enacted, nor were a number of other groups. The number of prohibited grounds has fortunately been extended considerably since the first code was enacted those many years ago.

In our case, it didn't come easy. We had to fight like hell for it. I remember those days; I was there. In fact, it got to a point where the opposition had threatened to defeat the then minority government of that honourable gentleman Bill Davis. Instead, in a meeting that took place in the cabinet room in this very building—I remember it as if it were yesterday—our coalition convinced the Premier and his cabinet to withdraw what was then the infamous handicapped persons rights act and undertake a consultative process with our coalition. The government agreed to that one simple demand. They did withdraw the bill and they did enter into a consultative process. That consultative process took a little while, but what it produced was one of the best levels of legal protection for persons with disabilities that was available in this country at that time—in fact, to this day.

Thus, I am here to call upon the current government to withdraw Bill 107 and begin undertaking the kind of consultative process that happened back in the late 1970s and early 1980s that led to the kind of human rights protection that persons with disabilities have today.

As we know, the current commission has come under a fair bit of criticism, including today. However—this is interesting—I sat here yesterday and listened to the presenters. As you will recall, one of those presenters was none other than the current chief commissioner of the Human Rights Commission, Barbara Hall. I recall Barbara saying, “Since I began my work here, a year ago this month, I’ve experienced first-hand what has been recognized nationally and internationally: how effective the commission can be. We’re recognized and emulated around the world, not simply because we’re one of the first human rights commissions but because of the outstanding quality of our work.” That wasn’t me as a community activist saying that; that was the chief commissioner of the Human Rights Commission, the current chief commissioner.

Now, I ask you, would the real state of human rights in this province please step forward or join this discussion? You can’t have it both ways. Either the commission is seriously flawed or it does exemplary work that is deserving of emulation around the world. It can’t be both ways. You can’t have it both ways.

Let’s now look at some of the aspects of the new bill. I’m not an economist, but today it is very common to ask for a business plan when a new project or a new program is being developed. Where is the business plan in regards

to Bill 107? Have you, as honourable members of the Legislature, seen it? I suspect not.

**The Chair:** Mr. Rae, you are 15 minutes in, as per your request.

**Mr. Rae:** Thank you, that’s great.

I know I certainly haven’t seen it. I think this is critical. We now have a situation in Ontario where we have a commission and a tribunal. According to yesterday’s speech by the minister, we will have some kind of legal support centre. I believe his words were singular and not plural, and that raises some questions I’ll get to in a minute. But under the new system, how many staff will be left with the commission? How many staff will the tribunal need to deal with 2,500 complains each year? How many staff will this legal resource centre have? Have you, members of this committee, seen those details? I haven’t. So how is it possible for members of the community, regardless of how we feel about Bill 107, to comment adequately on what is being proposed?

**1250**

I’m particularly upset about that because I remember the process over the AODA itself. The committee established an open process. Organizations from across the province came and presented. Hundreds of recommendations were offered and very few were ultimately enacted by the government. Part of the answer during that process was, “Some of your concerns are issues of implementation. Once the bill is passed, we’ll deal with those.”

I think we allowed ourselves to be hoodwinked and sold down the river during that process, but I’ve learned. I think it is imperative that the minister release the business plan that will show all Ontarians how this new system might operate and what kind of staff and other resources it might have.

Speaking of resources, as I understand it, the minister has said he does not anticipate any new large infusion of funding into the human rights system. If that’s the case, we’re all wasting our time here, regardless of what side we’re on. Without some new funding into the human rights system, all of our efforts—yours, mine and all the presenters who have come here—are a waste of time. All we will do is create a system that will have some of the inherent difficulties the current system has. And no, finances is not the only one—I’ll get there. But resources are important. I believe all of your parties have starved the Human Rights Commission over the past 20 years—some more than others, I admit.

I think the complexity of cases that come before the commission is evident from the heartfelt presentations that we heard just this morning. Those are not the kind of cases that go before a Small Claims Court. They aren’t dealing with whether my neighbour put up a fence that I don’t like or my neighbour’s dog is in my yard or that sort of thing. They are about discrimination. They are about difficult and complex issues.

Let’s think about the complainants who come to the commission. There is a significant power imbalance between citizens and various entities. Think about it: the difference between an applicant for a job and the em-

ployer; the difference between the individual who wants his information in Braille and a government ministry. I could go on with a large list. That's the sort of thing that citizens like me hope a Human Rights Commission will help redress, will help deal with some of the power imbalance that is abroad in our society, the kinds of power imbalances that the political system has failed to adequately address.

I could say a lot more about the nature of human rights and the fact that we have expectations. Let me say one other thing about what this bill might result in. Toni Silberman made an eloquent point yesterday when she said that individual complaints should inform systemic complaints. I have a difficulty. I told you I have two complaints currently before the commission. One involves being discriminated against in employment because the employer required a driver's licence on the job description. That complaint, members of the committee, has two sides to it. Yes, it has individual issues. I want and expect individual redress for the fact that I feel discriminated against, but I also filed that complaint to try and address some of the larger systemic issues: To what extent is it reasonable for an employer to require a driver's licence?

So under the new proposed system, we will have a commission that is supposed to deal with systemic complaints over here, and a tribunal over here that is expected to deal with individual complaints. Mine deals with both kinds. Which door should I enter? Should I enter the systemic door or should I enter the individual door? Where should I go? This is not a facetious question, members of the committee. In fact, I have tried this question on two or three of my lawyer friends and they don't know the answer either. I need to know, because I suspect the complaints that I have before the commission now are probably not going to be my last ones—probably not, although I hope so.

So there are operational problems, there are funding issues, and there is a need for a business plan. But there's also a need to streamline the commission, and I want to spend the rest of my time on some more specific ideas in that regard. I must tell you, I have never had the honour of working for the commission. I am not a lawyer; I'm a mere community member. But let me try some ideas.

First and foremost, I think there should be an audit of the commission, how it operates. The person hired to conduct that audit should be given some very specific criteria and a mandate, and that is to examine the operation of the commission, its practices and how it operates, with the idea of figuring out: Are there ways it can be streamlined? Are there ways that cases can be moved more quickly through the system? Are there better ways?

I support the call that has been spoken about by several people for allowing third-party complaints. This has been called for over and over again.

There needs to be greater independence for the human rights system. The notion now is that the commission will be expected to make its annual report directly through the Legislature. Why was the tribunal not similarly mandated? Why shouldn't it be doing the same?

Why should we, as citizens, have the right to hear about the work of the commission and not the work of the tribunal? I rather hope that one was an oversight that will be quickly corrected.

In days past, there was something called early settlement. As I understand it, that way that operated was that when a call came in that a human rights officer thought could be settled quite quickly, that person would call the respondent and outline the basis of the problem and attempt to effect a settlement without the filing of any formal complaint. I'm led to understand that that system often worked, but I know that option is no longer available.

I understand that the move towards eliminating commission staff from drafting complaints is something that we might have expected would streamline the process. I gather it's had the opposite effect; I gather that now members of the public, who are, after all, not human rights experts, nor should we expect them to be, end up sending in complaints that need significant redrafting.

Throughout the process, there are various kinds of delays. I believe the legislation should be amended to place much more rigorous time restrictions on the parties. There should be fewer delays. Timelines should be respected.

These are only a few proposals, but when you add some of those to the document the AODA Alliance put forward, I think we have perhaps the beginning of ways that might help fix the current system. Rather than throwing this baby out with the bathwater, it would be worth trying one more time to see if there isn't a way in Ontario to streamline the current system to make it work more effectively. After all, at the end of the day, the promotion and enhancement of human rights is critical, and not just for me as a disabled person. I, as a male, am as concerned as women are about the discrimination and harassment women feel. I, as a white urbanite, am as concerned, although I have never walked a mile in their moccasins, about the plight of First Nations peoples living both off-reserve or on distant reserves, and I think the rest of us in this province should be as well.

**1300**

When we think about the proposed legal centre, if there's only one, can we assume it will be here in good old Hoggstown? Well, maybe, maybe not. But if it's situated in Toronto, how are people who live in Kenora or in James Bay or in Morrisburg or in Leamington going to have the opportunity to consult that centre to get advice? It's much easier to do it in person than it is over the telephone. So how are those people going to be served? These are questions that require answers, and it is not good enough to wait until any bill is passed to get these answers.

I've posed some questions that I hope you, as honourable members both of this committee and of the Legislature, can get answered by the minister. I don't seem to be able to. I hope you are luckier than I have been. I implore you to get those kinds of questions answered before this process goes much further so that all Ontarians, regardless of what side we may be on in the

current debate, know what we're getting ourselves into. Is this new system really going to be better than what we've got now? Well, from what I can see so far, I'm sure not persuaded. I just hope that you, as honourable members, can get answers to some of the questions that I can't.

Thank you for the opportunity to be here to express my feelings about yesterday, to talk about the nature of human rights in this province and to make some suggestions that I hope will help reform the Ontario Human Rights Commission and indeed ensure that it is exemplary, that it is worthy of praise from all persons, whether in Ontario, other parts of Canada or around the world.

**The Chair:** We'll begin with Mr. Kormos. Please be very, very quick. We have less than two minutes in total.

**Mr. Kormos:** Mr. Rae, thank you very much. I apologize to you. It was a delinquency on the part of all of us not to have simply been more sensitive to the needs of folks out there, everybody, in terms of making sure that they have access to this committee and its process, so I tell you, I apologize to you. But I am still looking forward to Mr. Bryant standing up in the House and apologizing.

**Mr. Rae:** I appreciate your apology, Mr. Kormos, but it's not for you to make.

**The Chair:** Mr. Zimmer, is there anything further from the government side?

**Mr. Zimmer:** Thank you very much for taking your time and giving us your thoughts on this important topic.

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** Thank you very much, Mr. Rae. In my view, you've hit the nail on the head, both substantively and procedurally, with respect to the concerns being expressed about this bill.

Substantively, that is one of the reasons we in the opposition feel it's very important to get more information about how the system currently operates: so we can compare what's currently happening and how it could be improved, along with putting it against Bill 107 so we'll really know what we're dealing with. I thank you very much for that.

Procedurally, with respect to the other issues you've raised, I would like to address the committee on that point before we recess, if I may, Mr. Chair.

I would like to follow up on some of your comments, so thank you very much.

**Mr. Rae:** I would be pleased to meet with you or discuss any of these comments. I can only say to you, ma'am, that I hope you are more successful in getting answers than I have been so far.

**Mrs. Elliott:** We'll keep trying.

**Mr. Rae:** I look forward to your successes. Who knows? Maybe I will be persuaded that I should support Bill 107. I'm a bit skeptical, but then, I'm a bit of a cynic. But I look forward to the information.

**The Chair:** Thank you very much. That concludes our meeting today. We'll meet again Wednesday.

**Mr. Kormos:** Chair, there are some issues to be dealt with.

**The Chair:** Sure. Mrs. Elliott?

**Mrs. Elliott:** I think Mr. Rae's presentation today has highlighted the significant concerns a lot of people had with respect to what happened yesterday, with the Attorney General coming in and delivering this document to us. I did make the request yesterday before we broke to have the full text of what the amendments are actually going to be, particularly with respect to the legal support centre. In all fairness to the members of the committee and more particularly to the presenters here, we don't really know what we're dealing with. A lot of people want to take it on faith—and I don't blame them for that—that this legal support centre is going to be all they want it to be. But until we see what actually is in here, what it's actually going to say, in my view, I don't think we should have any further committee hearings. I would ask Mr. Zimmer to please state those concerns to the Attorney General.

**Mr. Kormos:** Further to that, I appreciate Ms. Elliott's call for faith. I've used up all of my faith in acknowledging the virgin birth, so I'll not have any faith left for the Attorney General.

I do say to legislative research, in terms of Mr. Rae's observations, because I don't know the answer, could research please tell us whether in the history of the Provincial Auditor there has ever been an audit of the Ontario Human Rights Commission, and of course give us the appropriate report and then responses by the OHRC.

Secondly, could research please get us material that elaborates on the report back by the OHRC in their 2005-06 report in terms of cases dealt with, resolved, gone to the tribunal? We've received in several forms, and through the actual report itself, the rough numbers without them being broken down with specificity. We don't have to deal with anything beyond 2005-06 because I think it's illustrative. But when they talk about cases disposed of, sent to tribunal, for instance, how long were tribunal hearings? How were they disposed of? How many cases were cases that were disposed of by simply telling the complainant that their complaint was not a valid complaint under the code, as compared to that their complaint could not be substantiated? We heard from Mr. Razack, for instance, earlier today, and that's one of the concerns he expressed. He was told he had a complaint that could not be substantiated. If we could get that kind of breakdown from—

**Mr. Avrum Fenson:** Of things that went to the tribunal or all cases?

**Mr. Kormos:** All cases coming into the OHRC, but more detail about how they were disposed of, why they were disposed of in that manner and the time frames within which they were dealt with. Mr. Hunt, was it, says the OHRC spins these things, Ms. Hall says no, Ms. Frazee smiles.

**The Chair:** Anything from the government side?

That concludes our meeting for today. We'll meet again next Wednesday at 9:30 a.m.

*The committee adjourned at 1308.*

## CONTENTS

Thursday 16 November 2006

<b>Human Rights Code Amendment Act, 2006, Bill 107, <i>Mr. Bryant / Loi de 2006 modifiant le Code des droits de la personne</i>, projet de loi 107, <i>M. Bryant</i> .....</b>	<b>JP-905</b>
Income Security Advocacy Centre; Ms. Catherine Frazee.....	JP-905
Ms. Cynthia Wilkey	
Mr. Rahamat Razack.....	JP-909
Ms. Stephnie Payne .....	JP-911
Human Rights Tribunal of Ontario .....	JP-914
Mr. Michael Gottheil	
Women's equality rights organizations and individuals.....	JP-917
Ms. Geri Sanson	
Advocacy Centre for Tenants Ontario .....	JP-921
Ms. Kathy Laird	
Ms. Michelle Mulgrave	
Ms. Consuelo Rubio	
Ms. Phyllis Gordon	
Alliance for Equality of Blind Canadians.....	JP-925
Mr. John Rae	

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JP-33

JP-33

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Second Session, 38<sup>th</sup> Parliament

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Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 22 November 2006

# Journal des débats (Hansard)

Mercredi 22 novembre 2006

## Standing committee on justice policy

Human Rights Code  
Amendment Act, 2006

## Comité permanent de la justice

Loi de 2006 modifiant le Code  
des droits de la personne

Chair: Vic Dhillon  
Clerk: Anne Stokes

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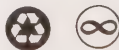
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 22 November 2006

Mercredi 22 novembre 2006

*The committee met at 0932 in room 151.*HUMAN RIGHTS CODE  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE  
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

**The Vice-Chair (Mrs. Maria Van Bommel):** I'd like to call the standing committee to order. The standing committee is meeting today for the consideration of Bill 107, An Act to amend the Human Rights Code.

Good morning. I want to welcome everyone here this morning. This is our third day of public hearings in Toronto. To make these hearings more accessible, American sign language interpretation and closed captioning services are being provided each day.

To facilitate the quality of sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt and ask you to slow down if we find that you are speaking too quickly for the interpreters.

As well, we also have two support attendants here in the room to provide assistance to anyone who requires it. If you do require it, please let us know.

**Mr. Peter Kormos (Niagara Centre):** Chair, on a point of order: It's one thing for the government to shut down the hearings after tomorrow, but it's another thing for less than 50% of the government members to even show up for what's left. They have less than 50% of their members on the committee here. Clearly, they don't give a damn what people have to say, even on the two days left of public hearings.

**The Vice-Chair:** Thank you for your comments, Mr. Kormos.

## OPERATION BLACK VOTE CANADA

**The Vice-Chair:** I'd like to proceed at this time. If I could call Operation Black Vote Canada to the front table here, please. Good morning.

**Ms. Delores Lawrence:** Good morning.

**The Vice-Chair:** Thank you for coming this morning. You have 30 minutes to make your presentation. If you use up the entire 30 minutes, there will not be an oppor-

tunity for members of the standing committee to make comments or ask questions of you. When you start, if you could introduce yourselves for the Hansard record and then proceed. Thank you.

**Ms. Lawrence:** Good morning. My name is Delores Lawrence, and I'm the chair of Operation Black Vote Canada.

**Ms. June Veacock:** I'm June Veacock, a member of Operation Black Vote Canada.

**Ms. Lawrence:** Operation Black Vote Canada, OBVC, thanks the justice policy committee for the opportunity to appear before it to speak about reform of the Ontario human rights system.

In this deputation, the OBVC does not support the status quo of the human rights system in Ontario. The OBVC supports changing Ontario's current human rights system into one that is responsive to and effective in dealing with and remedying day-to-day discrimination that affects Ontarians, especially anti-black racial discrimination, which disproportionately confronts our black and African Canadian society.

In our deputation, we will provide you with the reality that confronts our people. We will provide you with the reality as to why Bill 107 is not the bill to reform the human rights system and why it will have enormous consequences in reducing human rights protection for racialized and vulnerable persons, and we will offer you our blueprint for human rights reform, a blueprint that we believe the majority of users of the human rights system will support.

The OBVC continues to be gravely concerned about Bill 107. Our concerns are not merely, as the Attorney General asserts, "concerns over nuts and bolts." His analogy is the same as saying that the Pinto only had "nuts and bolts problems." You can remember that the Pinto was introduced and hailed as the car that would be a universally accessible vehicle.

The premise of the Pinto, like that promised by the Attorney General, was that everyone could have access to a car. The Pinto was to be a universally accessible vehicle. We were sold on the idea of having affordable transportation. Hindsight allows us to see what a disaster that Pinto was, and anyone who cares about human rights and knows about the Attorney General's plans to overhaul the human rights system is keenly aware that Bill 107 is a disaster waiting to happen. Bill 107 is Ontario's Pinto.

Even with the proposed amendments introduced by the Attorney General at the start of these proceedings, Ontario's human rights system, as he proposes, will not effectively protect and remedy human rights for vulnerable groups such as ours.

Let me be clear: The OBVC does not speak for black or African Canadians on this issue, but its mandate is to educate black and African Canadians on issues such as this. This is not an issue of who speaks for the black and African community; it is an issue of whether the black and African community will continue to have an effective human rights system in Ontario on which they can rely to protect them from the daily injustices encountered because of the colour of their skin and an equal voice in determining the system that best addresses the forms of discrimination they confront daily in their lives.

Often, when persons from our community take positions or speak out on issues, questions from the majority arise on leadership in the black and African community. Well, it does not matter who leads on issues like this because we will all be judged by the colour of our skin and not on our ability to lead.

As we watch and listen to the debate on reform of the human rights system, we are struck by those whose voices are being heard, those who seem to have access to the Attorney General, those whose views the Attorney General legitimizes as meaningful and those in the mainstream media who support the government on its blueprint for reform.

0940

The reality is that, despite the Attorney General's claims, supported by a small group of members of the Ontario Bar Association and the University of Toronto's faculty of law and law graduates, many of whom are one and the same, the so-called reforms proposed by Bill 107 will have immense consequences in reducing human rights protections for racialized minorities. If the Attorney General were indeed committed to supporting and protecting human rights, this commitment would be reflected in the organizations that were on the A-list to appear before you on the first few days of this hearing.

While the voices of many lawyers have been heard, the same cannot be said of the voices of racialized people and communities who are silenced daily, the real people who need protection. Instead, under the guise of so-called "reform," the government is setting up a plan of non-action, a plan which diminishes the functions of the Ontario Human Rights Commission by defining away racism and shifting the responsibility of addressing and remedying human rights violations away from the government and onto victims of discrimination.

We are also struck by the fact that the voices who are being heard by the Attorney General are those less likely to use the human rights system because of their power and privilege in this society; yet the voices of the groups most vulnerable to the proposed reforms of Bill 107, such as First Nations peoples, the disabled, black and African-Canadians appear to be silenced.

The Attorney General is not listening to groups who will be most impacted in the proposed human rights sys-

tem, and whose rights are threatened and will be compromised if Bill 107 were passed. He is not listening to vulnerable Ontarians who use the human rights system daily and who are best able to articulate their experiences in it and what needs to change to make it serve them better. Rather, he is listening to a group whose interests appear primarily to include making the human rights system in Ontario what they believe it should be and who may not ever use it because of their power and privilege, and who stand to gain financially.

We say that he is not listening to vulnerable groups because he has not replied to many questions that the OBVC asked him in June about the proposed human rights system. In a letter to the Attorney General in June, the OBVC told him that in its assessment of the bill, before the black community can feel comfortable that a direct access model will adequately protect their human rights, they needed answers to many significant and troubling concerns inherent in Bill 107. He has not responded to us, so we will ask him again publicly:

What is the estimated cost of the human rights system that he proposes: the commission, the tribunal and the human rights support centre? Will funding for this new human rights system be guaranteed in Bill 107?

In the direct access model, will all Ontarians who file complaints with the tribunal be guaranteed in law a hearing at the tribunal, or will their complaints be subject to challenges by powerful respondents with buckets of money before their complaints are heard or assessed? On what empirical data is the Attorney General relying to demonstrate that the tribunal could be more effective?

On what empirical data is he relying to show that the tribunal will not have backlogs similar to the commission? What is the average length of time it takes the tribunal to litigate a case, especially a race case?

What guarantees in law, procedures and processes will Ontarians have that their human rights complaints will make it through the tribunal gate?

What assistance will ordinary Ontarians have as they become familiar with and navigate the new tribunal model of direct access? If legal and/or other needed assistance will be given to persons accessing the direct access system, at what point along the complaints continuum will they have assistance?

If the complaint makes it through the gate of the tribunal, what guarantees in law will be given that his or her human rights' complaint will not be tossed out before a hearing? What guarantees in law will there be to ensure that cases involving racism and racial discrimination are not summarily dismissed because of alleged lack of evidence?

Direct access to the tribunal: Since the Attorney General and his government are bent on implementing the direct access model of human rights protection in Ontario, it behooves them to come clean and tell the people truthfully how much it will cost for the administration of the direct access at the tribunal, the disfigured commission and the human rights centre. The public also needs to know how long it will really take to process a

human rights complaint at the tribunal from inquiry to a resolution or hearing. How will the disadvantaged obtain evidence from the discriminator or prove his or her case? Since Bill 107 does not guarantee that each Ontarian who files a complaint will get a hearing before the tribunal, what criteria will the tribunal use to dismiss a complaint without holding a hearing?

The reality is that a direct access tribunal system mimics the judicial process. Repeated studies, and the lived experiences of Canadian blacks, have shown that the judicial and quasi-judicial systems institutionalize and perpetuate racism rather than eliminate it. The reality is that few racialized human rights complainants have benefited from a hearing, and that the hearing process has been disempowering, not empowering, for them. A review of race-based boards of inquiry and tribunals shows how woefully inept they have been in understanding and remedying racism. The reality is that having one's day in court is a Eurocentric notion that does not sit comfortably with many cultures. It is a concept that is perpetuated by the white, privileged and predominantly male members of the legal profession, such as those from whom the Attorney General takes advice on human rights reform.

Let me explain how the courtroom and the proposed direct access process, which mirrors the judicial process, fails to ensure that racialized groups receive a fair trial. Given the depth of racism and intractability of racial prejudice, one cannot expect the legal system or, in this case, an adjudicative process that is judicialized, to eradicate the impact of racial discrimination. Recall the report issued on the criminal justice system, which found that racialized communities have, and for good reason, a profound distrust of the judicial system.

The judicial system fails miserably in reflecting the faces of those who are brought before it. Decision-makers, the prosecutors, and even defence counsel, remain predominantly white. Despite the Attorney General's assurances of legal representation, which, if they appear in the regulations is a hollow promise, such representation may serve as a hindrance to the complainant. Legal representation muffles, if not completely silences, the voices and perspectives of the disenfranchised. It ensures that the victim of discrimination has no control over or say in the process. With all due respect, the Attorney General has been unable to eradicate racial discrimination in the judicial system. Why, then, is he insisting on a further judicialized human rights system?

The gutted human rights commission: The reality is that Bill 107 will gut the commission of its effectiveness in addressing discrimination. Retention of the commission to conduct public education and produce policies are worthless exercises, as the structure in which the commission is expected to operate remains undefined. The assurance by the Attorney General that a robust commission will emerge under Bill 107 is a sleight of hand, skilful deception, a neon light flashing "Human Rights Commission" posted on an empty building.

The new human rights system: It is a reality that a healthy economy depends on immigrants and therefore

the number of immigrants accepted is being increased. Immigrants today are, for the most part, racialized. Ontario's demographics are rapidly evolving. However, instead of responding to the racial and cultural shifts of its citizenry, the McGuinty government has chosen to regress, to proactively remove the very structure that protects and promotes the human rights of all Ontarians.

Human rights commissions were instituted in Canada some 40 years ago to administer human rights legislation and protect the rights of those who are regarded as different, primarily immigrants of colour. There is agreement from human rights advocates and stakeholders in the present debate on reform that our human rights system needs to change to respond to the changing nature of discrimination and the context in which present day human rights abuses arise; more specifically, that Ontario's human rights system and the protection of human rights need to be modernized to take Ontario into the 21st century.

The reality is that within Canada's racialized labour markets there have emerged specific forms of racism directed at certain racialized communities. Post 9/11, there has been a proliferation of anti-black racism, anti-Chinese racism, anti-Asian racism, anti-Arab racism and Islamophobia. The demographic data of Toronto show that racialized groups will soon form a disadvantaged majority, and with this, we remind the committee members of the Toronto Star's feature on poverty by postal code. The reality is that racism manifests itself in employment, wage and educational disparities. Statistics show that racialized minorities are highly educated, but their human capital is undervalued. They are subjected to racial profiling and are unable to access the socio-political streams that are open to white Canadians.

#### 0950

As in the marketplace, there are many unions working to represent the interests of racialized members; there are other unions that could do more. There are many reasons why racialized workers benefit from a proactive human rights system that includes a compliance function. Simply put, not all racialized workers (1) want "their day in court," (2) have the means, financially, emotionally or psychologically, to "get to court" or the language skills to navigate the judicial process that direct access requires or (3) believe that punishing the employer by taking them to court will root out deeply held prejudicial attitudes and behaviours.

This government proposes a major overhaul of the Ontario Human Rights Commission. We propose that a major overhaul is extreme and, rather than make the process more effective, will only create, at great expense, a system that mirrors the current one. In fact, Bill 107 has become a smoke-and-mirrors game.

We support the vision of a modern human rights system which is responsive to the needs of all Ontarians, forward-looking, accessible in its fullest meaning, must continue to advance human rights into the 21st century and must continue to be the most effective human rights system domestically, nationally and internationally. Bill 107 does not provide this vision.

Let me outline to you what we believe are the essential elements of a modern and effective human rights system and one that would streamline the current human rights system without huge costs to the taxpayer.

We agree that there are instances in which a complaint should proceed directly to the tribunal. For example, complaints that are not bona fide clog up the system and should not be permitted to do so. Recalcitrant respondents should be taken directly to the tribunal instead of delaying the process by refusing to return and answer to the complaint or cooperate with commission staff.

We do not believe that the tribunal can or should replace a compliance function. For racialized Ontarians, the excising of the compliance function is signalling a new era of neo-liberalism in which the government is removing itself completely from human rights protections.

**Ms. Veacock:** Some of you may know that I spent many years advocating for the rights of workers as a trade unionist and as a human rights advocate. In these many years, I have had involvement—and I might add, with some success—in Ontario's human rights system and the Human Rights Commission. Some of my observations on this matter are:

There has been a steady erosion of workers' protections in this province, with the diminishing of human rights through Bill 107 as the most recent.

Fading political will to proactively challenge racism has bled Ontario's human rights system. First, under the Conservative government, commission offices outside of Toronto were closed down, replaced with a 1-800 call centre in which calls are timed and limited and people-to-people contact removed.

The commission's accountability has increased. For example, it has introduced mediation as an alternative to dispute resolution.

Under the Liberal government, human rights complaints have increased, as has immigration, but the commission's budget has remained the same. In other words, during changing times, the commission is expected to produce more with the same funds.

We recommend a human rights system in which: (1) the commission is retained, revamped, adequately funded and enhanced to be more speedy and effective in processing individual and systemic complaints; (2) a tribunal that is less judicialized and less process and procedurally oriented; and (3) a legal support centre that provides assistance to complainants in need of support in the commission's process or at the tribunal without economic barriers.

Further, the OBVC supports a human rights system that allows for the integration of individual and systemic compliance and one that processes complaints speedily within it without compromising justice, appropriately remedying discrimination and the achievement of equality. The OBVC requires that Bill 107 impose standards for the speedy processing of human rights complaints.

Our amendments to Bill 107:

(1) Permit the commission and tribunal to report directly to the Legislature of Ontario. Attorney General

Bryant's proposed amendment that the commission make a report to the people is superficial, we believe, and cosmetic.

(2) Require the commission to resolve or refer a complaint to the tribunal in one year from the time the complaint is filed with the commission.

(3) Make mediation in each complaint mandatory and with consequences where parties refuse to mediate. Mediation should not be voluntary, and only the commission should be able to decide when it is not appropriate for mediation to take place.

(4) Advance human rights; in particular, an effective commission to ensure continued advancement in the eradication or reduction of racism and racial discrimination through education and public policy development.

(5) Review the human rights system within five years from the date of proclamation of Bill 107.

In our opinion, a modern human rights system must therefore:

- be independent of government and ensure that the commission and tribunal report directly to the Legislature;

- be funded adequately, and such funding for the human rights system guaranteed in legislation;

- give the right of appeal of tribunal decisions;

- give full access to and assist all persons in Ontario to file human rights claims, regardless of geography and financial means;

- educate individuals about their rights and responsibilities in the human rights system and provide adequate assistance or guidance to individuals who may not be familiar with the legal requirements of the human rights system, in particular "new Canadians";

- assist individuals to understand how issues relate or do not relate to the Human Rights Code;

- provide mechanisms for parties in a human rights claim to quickly and amicably resolve the matter;

- provide timely intervention in human rights issues when urgency dictates or an immediate remedy is critical, for example, a disabled black child whose education is disrupted by the lack of appropriate accommodation in the education system;

- be sensitive to cultural and linguistic diversity and provide services in a culturally sensitive manner to all Ontarians, including a range of linguistic, cultural and disability support services throughout the human rights system.

It is our position that a human rights system with the above is a system that would be truly accessible.

We agree with the Attorney General on the importance of adopting a systemic approach to the elimination or remedying of discrimination. We particularly agree that a human rights system must effectively address racial discrimination. Racial discrimination in Canada is like an insidious disease confronting present-day human rights systems, one for which a cure seems elusive in the daily individual processing of human rights complaints.

Unlike other forms of discrimination practised in our society, racial discrimination in a polite country such as

Canada is rarely expressed openly. Indeed, it is often very subtle, often embedded in structures and long-standing institutional practices and norms that inform them and have a racist impact. It is therefore often necessary to collect comparative data in order to find evidence of structural and institutional racism.

It is therefore essential that a modern human rights system retain an aggressive systemic function to get at the insidious nature of racism and racial discrimination. We welcome the amendment which proposes to give the human rights system the broad and requisite enforcement powers to inquire into and proactively intervene to remedy institutional and structural racism and racial discrimination instead of waiting for a claimant to arrive at the human rights system's doorstep to file an individual complaint. We have learned over the years that a case-by-case approach is what builds the backlog.

**1000**

A strengthened and modern human rights system must provide for an approach that allows seemingly unrelated or unconnected complaints to be managed together to bring to light everyday issues of discrimination, and that contains mechanisms for inquiring into and resolving complaints with individual and public interest remedies. As such, we believe that the silo approach suggested for this modern system will not provide an effective vehicle for the management and successful systemic outcomes required in a human rights system in Ontario.

**The Vice-Chair:** You have five minutes left.

**Ms. Veacock:** In our view, the Attorney General can improve upon the present human rights system by listening to those who use it, by making it modern and effective for all Ontarians, and not dismantling it, as he proposes to do.

**Ms. Lawrence:** In summary, we ask the Attorney General, why eviscerate or disembowel Ontario's human rights system? Why not build on a system that for the most part works, a system that includes the good work which the commission has demonstrated over the years? Why is he not listening to the many vulnerable voices that use the human rights system, which are telling him that his proposed human rights system in Bill 107 will not work for them? Why does he continue to listen to his friends in the legal profession who are powerful and privileged, who likely do not and will not use the human rights system and who do not know what it is like to live in our black skin?

We believe that this government and Bill 107 are setting human rights back decades, forcing racialized persons to lose what ground they have fought so hard to attain. Compare the judicial system's treatment of a black man who was denied service in a bar at the Montreal Forum in the 1940s to that of the recent incident in Montreal where a black patron was also denied service in a bar. The latter, with the assistance and support of the Quebec human rights commission, had his dignity restored; his predecessor did not.

We are asking the Attorney General and the government of Ontario to improve the human rights system for

black and African Canadians whose history in Canada necessitated a Human Rights Commission for over 40 years. We're asking him not to break it by bringing together in a human rights system front-end assessment, information gathering or investigation, the application of policy and current jurisprudence. New successes can be realized in the advancement of the human rights of previously disenfranchised Ontarians, in particular, black Ontarians.

**Ms. Veacock:** I wish to place on record my personal outrage over the deception of this government with respect to Bill 107 and closure of hearings on this bill. This Liberal government has filed, without warning, an 11th-hour motion to cut off public hearings on the bill and force a one-day debate on so-called amendments to Bill 107, amendments that we have not seen.

We find the Liberal government's action undemocratic and unconscionable. The Attorney General stacked the first days of the hearing with his supporters of Bill 107. Many racialized groups that oppose the bill are scheduled to appear throughout the rest of the month and throughout December, having submitted their requests months ago. They will no longer be afforded the opportunity, after having spent months preparing their submissions. This government shutting down debate on Bill 107 is cruel. It denies those voices most affected by racism the right to make their concerns about the bill public.

Shutting down the hearings is quite ironic, because the government is denying our community and other racialized communities the right to a hearing before this justice policy committee when the government's strongest argument in favour of Bill 107 has been that it supposedly ensures everyone direct access to a hearing at the Human Rights Commission. I guess that, for us, it's direct access to the tribunal but no access to this justice committee. My community has been completely shut out, except, of course, for the very few who support this bill.

I have spent my life in Canada representing many complainants in the human rights system. Yes, at times, I have been frustrated with the long delays in obtaining justice; at other times, I have obtained satisfactory outcomes for complainants, especially with the introduction of the mediation process in the Ontario human rights system.

Bill 107 will not only establish direct access to the tribunal, but as well will facilitate what could be called a human rights industry—an industry of lawyers exploiting my people's pain. Moreover, what I find particularly disturbing is that the minister seems to have listened primarily to powerful and privileged white able-bodied males and females who (1) have never experienced racism or, may I say, discrimination and (2) are positioned to benefit from this bill.

This bill is not about improving access and protecting human rights; rather, it is about contracting out and privatizing the work of the commission while rewarding friends and supporters of Bill 107.

**The Vice-Chair:** Thank you very much. Your time has expired. I appreciate your coming in to make your presentation.

CANADIAN HEARING SOCIETY,  
TORONTO

**The Vice-Chair:** I call forward the Canadian Hearing Society, Gary Malkowski and Susan Main.

Can everyone see the sign interpreter if we have the interpreter standing here? Does that work for everyone?

**Mr. Gary Malkowski (Interpretation):** Yes.

**The Vice-Chair:** Thank you. I want to be sure that everyone has access.

Mr. Kormos.

**Mr. Kormos:** I'm wondering—what do they call these, lapel mikes? Is this what the interpreter needs?

**Ms. Susan Main:** He will in a minute.

**The Vice-Chair:** Is that not on?

*Interjection.*

**The Vice-Chair:** Is it functioning yet? No. We're having technical difficulties here. If everyone will be patient, I'm sure we will get it going. Is it going now?

**Ms. Main:** Yes, it is.

**The Vice-Chair:** Thank you. That's wonderful.

Welcome to the standing committee. You have 30 minutes in which to make your presentation. If you do not use up the entire 30 minutes, there will be opportunity for members of the standing committee to make comments or ask questions. So introduce yourselves for the Hansard record and then please go ahead.

**Ms. Main:** Good morning. My name is Susan Main. I'm the vice-president of fundraising and strategic communications at the Canadian Hearing Society.

**Mr. Malkowski (Interpretation):** My name is Gary Malkowski from the Canadian Hearing Society. I'm special adviser to the president of the Canadian Hearing Society on public affairs.

1010

**Ms. Main:** The Canadian Hearing Society is the largest agency of its kind in North America, serving deaf, deafened and hard-of-hearing people and their families. We were founded in 1940 and we have 28 offices across Ontario, providing high-quality, cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals. We are a multi-service agency, offering 17 different programs to address a broad range of hearing health care and social service needs. These services include hearing health care counselling, employment services, Ontario interpreting services, information and general support services, to name just a few.

In general, the Canadian Hearing Society is pleased that the government wants to improve and strengthen the Ontario human rights system. However, we have some very serious concerns with the direction of the government's reforms set out in Bill 107 and the November 15—as-yet-untabled—amendments, starting with some very serious and perhaps telling oversights in process.

We regret that the Canadian Hearing Society was not consulted by the Attorney General before he announced his plans for reforming the Human Rights Code. We also regret that the government did not take up the proposal to hold an open, accessible public consultation before intro-

ducing Bill 107. We contrast this with the government's excellent consultations between 2003 and 2005 as it developed Bill 118, the Accessibility for Ontarians with Disabilities Act.

The government's most recent display of respect for human rights is downright counterintuitive. Bill 107 is purportedly about reforming and enhancing human rights in Ontario, yet last night's motion to invoke closure on Bill 107 shuts down public hearings that have been scheduled for months. The vast majority of signed-up presenters—I think there are some 200 individuals and organizations—have had the door closed in their face and denied the opportunity to have their perspectives, experiences and insights shared with you. Standard procedures for debating amendments to the bill at both the committee level and at third reading in the Legislature have each been restricted to one day, November 29. These are normally open-ended processes to accommodate full and fruitful discussion.

It's interesting to note that in today's *Star*, there is a prominent ad inviting people to make oral presentations on Bill 107. The deadline to contact the committee clerk is December 15th. The ad reads: "The committee intends to hold public hearings in Toronto commencing Wednesday, November 15, 2006. The committee intends to hold additional public hearing in the winter on dates and in locations to be determined."

That this last-minute closure is being invoked in the name of human rights reform is puzzling at best and muzzling at worst.

CHS endorses and agrees with the AODA Alliance's Blueprint for Effective Human Rights Reform in Ontario that was issued on November 6, 2006 and is posted to the AODA Alliance website. Without taking away from the many important recommendations and insights set out in the AODA Alliance's blueprint, the Canadian Hearing Society specifically draws the committee's attention to these points:

There is no commitment to any new funding for an already underfunded, overtaxed human rights enforcement system. Regardless of what bill is adopted, what amendments are made, without adequate funding the whole process is doomed to failure.

The proposed government-funded human rights legal support centre does not commit sufficient funding to fulfill the government's pledge of free lawyers for all. This could lead to victims standing unrepresented before the tribunal, pitted against their opponents, who more often than not are in a position to afford legal counsel.

The services offered by the legal support centre appear to be tiered, ranging from full legal representation to advice to information. What services are provided to a person will be decided by the legal support centre, casting the centre in the role of gate-keeper and quite possibly re-creating the age-old backlog problem that plagues the current human rights system and which Bill 107 is trying to rectify.

Bill 107 repeals the existing Human Rights Code provision that every human rights complainant is entitled to a public investigation.

The non-elected Human Rights Tribunal can override important procedural rights that are currently guaranteed by the Statutory Powers Procedure Act.

Our support of the AODA in June 2005 was premised on the understanding that the investigation and enforcement of that important act would come from the Human Rights Commission. We were assured that there was no need to include enforcement mechanisms within that important act itself because that was already provided for within the mandate of the Human Rights Commission. Bill 107, even with the proposed amendments, does not ensure that even when a victim wins a case, tribunal orders will be fully enforced or complied with. The lack of enforcement gives us great concern.

**Mr. Malkowski (Interpretation):** Mr. Chair, I wonder if you would be so kind as to ask the members of this committee to put the BlackBerry away for the presentation. I find it quite rude and offensive.

Additional ongoing concerns regarding access for people who are deaf, deafened and hard of hearing: For deaf, deafened and hard-of-hearing complainants and respondents, full participation in the human rights complaint process is fundamentally linked to ensuring clear, accurate, professional two-way communication. When the appropriate accommodations are not in place, full participation by this population is de facto compromised.

The Ontario Human Rights Commission lacks clear policies and procedures for providing access and accommodation for deaf, deafened and hard-of-hearing participants in the human rights complaint process. We have identified major barriers and gaps in accessibility for deaf, deafened and hard-of-hearing individuals to the services of the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario.

For example, American Sign Language and la langue des signes québécoise interpreters, real-time captioners, computerized note takers, assistive listening devices and other means of communication assistance are not being provided, even for the most essential services. These forms of access are being denied despite a clear statement from the Supreme Court of Canada in the Eldridge case that equal access is guaranteed by section 15(1) of the charter. The recent Federal Court of Canada decision requires all federal government programs, offices and services provide sign language interpreters "upon request." The ruling makes explicit the right of access to government. Provincially, the government of Ontario committed to the implementation of the Accessibility for Ontarians with Disabilities Act to ensure that communication access will be in place.

1020

Most legal clinic offices, lawyers and paralegals are not able to assist deaf, deafened and hard-of-hearing individuals who have limited English literacy skills and do not understand OHRC intake forms. There is a lack of funding for communication access accommodations.

Many deaf, deafened and hard-of-hearing individuals, especially those who are marginalized, face communication barriers during the process of filing a complaint, intake, interviews, mediation and the investigation.

The commission and the tribunal face chronic funding limitations that lead to unnecessary delays in the handling of human rights complaints. We are aware of a number of deaf, deafened and hard-of-hearing commission complainants who have experienced these delays. In addition to the standard waiting time, deaf, deafened and hard-of-hearing individuals inevitably end up waiting even longer than average because of the need to book sign language interpreters or real-time captioners. Consumers fear the cancellation or postponement of their scheduled commission meetings due to lack of availability of appropriate communication accommodation. Cancelling or postponing commission or tribunal sessions would mean an additional wait of at least three to six months just to set up another meeting or hearing.

Limited financial resources and insufficient staffing levels lead to problems with the effectiveness of the Ontario Human Rights Commission. For example, in some human rights cases involving deaf and hard-of-hearing complainants, the Ontario Human Rights Commission lawyers have been so backlogged that deaf and hard-of-hearing complainants have been forced to hire their own lawyers to ensure they have high quality legal services. In some cases, deaf, deafened and hard-of-hearing commission complainants are not able to afford qualified lawyers to represent their complaints while the respondents, who are often well-resourced governments or large companies, are able to afford expensive and well-qualified lawyers to represent them. Many legal aid services across Ontario will not take on human rights cases, leaving these complainants with no representation when trying to fight big companies or governments.

Another issue is the potential conflict of interest that can arise due to the current reporting structure. As it stands, the commission reports to the Ministry of the Attorney General, which could compromise complainants' cases against a specific ministry's policies or procedures. A more objective reporting structure that sees the commission reporting directly and independently to the Ontario Legislature would be a significant improvement.

CHS strongly endorses the immediate need for a fully public system for investigating, prosecuting and enforcing human rights. The human rights system should:

- protect discrimination victims' existing rights provided in the Human Rights Code;
- ensure increased funding for both the Human Rights Commission and the tribunal;
- remove legal barriers to filing human rights complaints;
- improve the Human Rights Commission;
- streamline the Human Rights Tribunal;
- ensure the human rights system's future effectiveness;
- ensure new legal supports for human rights complainants; and
- ensure that qualified communication accommodation measures are available, e.g., sign language interpreting, real-time captioning and deaf/blind intervening.

The Canadian Hearing Society is prepared to work closely with the Ontario Human Rights Commission or any future human rights system to develop appropriate policies and provide awareness training for human rights personnel to ensure deaf, deafened and hard-of-hearing individuals can be full participants in any human rights proceedings in which they are involved.

You're all familiar with the phrase, "One steals from Peter in order to pay Paul." I take \$5 out of one pocket and put it into another; I still have \$5. Essentially, that's what Michael Bryant is doing. He's stealing money from the commission and giving it to the tribunal, moving money from one pocket to another. There is no new money being fed into the system. How can we possibly improve the human rights system without adding new funding? I don't get it.

**The Chair (Mr. Vic Dhillon):** Thank you very much. We have four minutes for each side. We'll begin with Mr. Kormos.

**Mr. Kormos:** Thank you, folks. I want to underscore the message being delivered by the two of you and the two presenters who preceded you, and that is that there are all sorts of people across this province with incredible experience and expertise in combating discrimination who are eager to assist in meaningful reforms to the Ontario Human Rights Commission. It's an insult to slam the door in their faces when it comes to this, the most important part of the parliamentary process, the public hearing part, because, Lord knows, what happens in the chamber with whipped votes is very much predetermined. It's an insult to slam the door in the faces of people who want to participate in the public process. It's just downright plain, damn stupid to not take advantage of their expertise and experience when everybody agrees—everybody—with the proposition that we should all be working to make the Human Rights Commission a more effective, appropriate and relevant body.

**Mr. David Oraziotti (Sault Ste. Marie):** Well, why didn't you do it?

**Mr. Kormos:** There's some grumbling going on from the government benches. Maybe the grumbler would like to take you on, Mr. Malkowski.

I read the data from the commission—the commission's own data—and unless we've got a fraud being perpetrated by commissioner after commissioner, it shows that, in 2005-06, some 2,260 cases were dealt with; 11.3% were dismissed on the merits, approximately 230 cases. The rest were resolved one way or another. We've been hearing the horror stories. Are they indeed the horror myths? Is, in fact, the commission working a little better than some would have us believe? There's some pretty impressive data, and I'm not going to join the chorus of those who would implicitly, by condemning front-line staff as either being incompetent or corrupt, similarly be condemning their management, their commissioners and their chief commissioners as being incompetent or corrupt.

There's a problem here in terms of the data, friends, and the refusal to carry on with these hearings I think

aggravates and complicates the matter; it doesn't mitigate it. Thank you so very much.

**The Chair:** Thank you, Mr. Kormos.

The government side?

**Mr. David Zimmer (Willowdale):** Mr. Malkowski, let me welcome you to the committee hearings. I don't know if some of my other colleagues realize this, but Mr. Malkowski himself was a distinguished member of this Legislature, I believe in the early 1990s. Is that correct?

**Mr. Malkowski (Interpretation):** Yes.

**Mr. Zimmer:** I think it would be helpful for this committee if you would share with us your experience with human rights reform during that period, 1990-95.

1030

**Mr. Malkowski (Interpretation):** Our experience during that time and today was that there were many Legal Aid Ontario difficulties because of underfunding. The community legal centres are seriously underfunded, and the Ontario Human Rights Commission is still facing some serious difficulties due to a lack of funding.

During that time, when a lot of the cuts were taking place—and I admit that our government made those cuts, but what's happening with this government is far worse in terms of the reductions to funding, and the staff reductions as well. How can you make improvements to the human rights system without adding additional resources, either human or financial? And so my experience in my government, as you'll see in the Mary Cornish report and her recommendations—it's an excellent report, but there is an awful lot that needs to be updated in order to reflect today's society. The current system of human rights, and in fact the Human Rights Commission right now, is on an upward swing. Things are improving; the system is improving. At the same time, funding is being cut, staff is being cut, cuts are happening everywhere and downsizing is going on at the same time. At the same time, we're seeing improvements to the system.

So there are some real concerns. This article about legal aid: They've got a very serious backlog again. The courts and the Ministry of the Attorney General are also experiencing severe backlogs. So I'm very worried about many of the civil rights violations that are going on, particularly for people who are disabled, particularly for people who are deaf and hard of hearing.

**Mr. Zimmer:** I just want to get one more question in.

**Mr. Malkowski (Interpretation):** So they are the most vulnerable. Something needs to be done. We need to do something right now. Please respect the democratic process. I'm asking you to cancel yesterday's motion and allow people with disabilities and organizations to participate in the democratic process. This is the most foundational piece of legislation for the human rights process.

**Mr. Zimmer:** Just one more point.

**Mr. Malkowski (Interpretation):** I can't believe that you're doing this. I mean, I cannot believe this ad, the false advertising that's going on. It's fraud. It is a fraud to the public. You've got a deadline of December 15. This was in this morning's newspaper.

**Mr. Zimmer:** But just for the record, you did recognize the Cornish report as an excellent report, to use your words, and as I understand it, in the government from 1990-95, that report was shelved. So I just point out that at least we're making progress on the Cornish report, which is something that didn't happen with the previous government.

**Mr. Malkowski (Interpretation):** And I would like to put on the record that the Mary Cornish report in 1990 was excellent. I'm very disappointed—I would like it to be on the record—with all parties in the government who were not championing the human rights issues by failing to provide increased funding. So that's on behalf of both the Conservative and the NDP parties.

I congratulate them for championing the human rights process now. There's no respect for this process. You've got a lot of nerve and are doing enormous damage to the current human rights system, something that's taken years and years to build.

**The Chair:** Thank you. Mrs. Elliott.

**Mrs. Christine Elliott (Whitby-Ajax):** Ms. Main and Mr. Malkowski, thank you very much for your presentation. I hope you'll permit me to just turn slightly so that the interpreter can hear me.

With respect to the decision by the Attorney General to invoke closure and to cut off the public hearings here, I'd just like to add to what my colleague Mr. Kormos has indicated. It's not only insulting to all of the groups and presenters who had hoped to make representations here; it's also presumptuous to presume that you will know what each and every group is going to say. I've learned a lot from the presenters we've heard from so far this morning, things that I did not know, things that would be relevant in terms of making a decision. But to say that we've heard from enough groups—"You hear from one, you've heard from them all"—is insulting; it's presumptuous; it's wrong. I agree with you completely.

Secondly, with respect to the issue of the legal support centre, the Cornish report, I agree, had as its centrepiece the need for a fully funded legal support centre, and we certainly have seen no evidence of that. We've seen vague promises from the Attorney General about a legal support centre—nothing concrete. He has put it in the legislation but, for all practical purposes, as you say, robbing Peter: eviscerating the commission, taking whatever money you can from that to put into the tribunal. If you're going to guarantee a lawyer to represent you throughout this entire process, you cannot do that without putting significantly more money into the system, and there's no indication that we're going to see that. The justice sector budget has been flatlined through 2008-09. Legal aid is starving. Where is this money going to come from? You say you don't get it. I completely agree. I don't get it. I suspect Mr. Kormos doesn't get it. The official opposition parties don't get it, and many, many hundreds of groups and individuals in this province don't get it.

We support all of your comments and thank you very much.

**Mr. Malkowski (Interpretation):** Thank you very much. I would like to appeal to the Liberal members here. I'm asking you to please reconsider and allow individuals of Ontario and organizations to come and speak to this issue. This is the most foundational basis of human rights legislation; it's the most important piece we could have. Please, please, reconsider your position. Stop recycling Bill 118, because without this foundational human rights system—if you pass this piece of legislation, you'll destroy Bill 118, the Accessibility for Ontarians with Disabilities Act. It will then become toothless. It will be a useless piece of legislation. Accessibility will become a joke. So I'm asking you again to reconsider. I recommend that the Attorney General please consult with the former Minister of Citizenship, Marie Bountrogianni, and the Premier of Ontario to learn more about making things more fair and more accessible using that model as an excellent model, and I think it will greatly affect this piece of legislation.

I thought we could put our trust in you and I gave you the benefit of the doubt, and now you've lost it. This is becoming an election issue.

**The Chair:** Thank you for your presentation.

**Mr. Malkowski (Interpretation):** Thank you for making this meeting accessible.

**The Chair:** Is Graham Lawson here? Mr. Lawson is not here, so I want to call Edward Ackad.

**Mr. Zimmer:** Chair, just because we have some time here, can we have a two- or three-minute adjournment, the mid-morning, post-breakfast adjournment?

**Mr. Kormos:** It's the middle-aged male syndrome, isn't it, Mr. Zimmer?

**The Chair:** We'll break for about a five-minute recess.

*The committee recessed from 1039 to 1049.*

#### EDWARD ACKAD

**The Chair:** Welcome back to the committee. The next presenter is Mr. Edward Ackad. Good morning, sir. You have 20 minutes. You may start.

**Mr. Edward Ackad:** Good day to the committee. Thank you for receiving me. My name is Edward Ackad and I am here to urge you to do the right thing and stand up for the principles of equality and justice by including in Bill 107 a repeal of section 19 of the Ontario Human Rights Code.

I'll give a quote from the Canadian Conference of Catholic Bishops: "Religious discrimination is an offence against the dignity of the human person; a contradiction to the sincere respect which is owed to other faiths, and an offence against charity."

Section 19 of the Ontario Human Rights Code voids equal treatment before the law and is contrary to the very intent of the law. The source of this is subsections 93(1) to (4) of the Canadian Constitution, which enshrined Ontario's religious discrimination in 1867. It is time to change that.

The injustices and human rights violations that must be addressed:

(1) The separate school system can discriminate admission to their publicly funded institutions based on the student's religion up to grade 9. This is an absolute right.

(2) The separate school system can hire or fire teachers based on their adherence to the Catholic faith. This is the subject of a brand new human rights court challenge based on a teacher from Toronto and Ottawa.

(3) People of all or no faiths must subsidize the school teachings of the Roman Catholic Church. The funding formula pays for children on a per capita basis with some modifications for geography and other situations, but not including their religion.

(4) Canada's credibility on human rights issues at the UN is compromised because of Ontario's separate school system. We have twice been found in violation, in 1999 and 2005. In 2005, we were condemned because we didn't do anything about it.

Lastly, probably most disturbingly, the constitutional protection for this injustice may no longer exist, and no one has looked into this.

I will quote from a report of the special joint committee to amend section 93 of the Constitution Act, 1867, concerning the Quebec school system. Some expert witnesses expressed the opinion that Roman Catholic and Protestant denominational school boards and schools would be declared unconstitutional once the amendment was made, unless section 33 of the Canadian charter was invoked. In support of their arguments, the witnesses referred to recent court decisions holding that, without the denominational education guarantees in section 93, publicly funded Roman Catholic schools in Ontario would be unconstitutional because such schools would contravene the Canadian charter's freedom of religion and equality guarantees. These injustices will not be addressed in any way with the proposed Bill 107, and the religious discrimination against 66% of Ontario's population will continue.

Common excuses for inaction: The Constitution obliges Ontario to fund these schools. This I hear a lot. While section 93 of the Canadian Constitution does oblige Ontario to provide Catholic schools—

**Mr. Zimmer:** On a point of order, Mr. Chair: With due respect, I thought the gist of the submissions was to be on the provisions of Bill 107 and whether that bill should go ahead or not go ahead, rather than—I say this with the greatest of respect—a submission regarding a particular complaint under the act.

**Mr. Kormos:** Chair, to that point.

**Mr. Zimmer:** I would be quite interested in hearing the comments of the witness on what he thinks of Bill 107 as a vehicle to resolve these kinds of issues that he's raised.

**Mr. Kormos:** No, I'm sorry. You don't get to pick and choose, Mr. Zimmer. At debate are amendments to the Ontario Human Rights Code. While I quite frankly do not share this presenter's views on this issue—again, this is bizarre. This goes from wacky to wackier. First you

impose time allocation, and now you're trying to shut down people who come here who maybe express an opinion—and I don't know whether you agree with it or not; that's your business. I'm not afraid of this man's point of view. We're discussing the Ontario Human Rights Code. Is he talking about particular sections of Bill 107 as they relate to the structure of the commission? No. But he's certainly talking about the application of the Human Rights Code from his point of view. Damn it, he has a right to be here. Let him talk. Why are you trying to muzzle people?

**The Chair:** Thank you, Mr. Kormos.

You may continue.

**Mr. Ackad:** Thank you. To address that, I again ask for an amendment to repeal section 19 specifically.

The Constitution obliges Ontario to fund these schools. While section 93 of the Constitution does oblige Ontario to provide Catholic schools, other provinces have amended the Constitution to abolish this requirement—Quebec and Newfoundland, for instance—through a bilateral agreement with the federal government. So it's possible.

The second argument I hear is that it has been like this since Confederation. This is the tradition argument. By this reasoning, women would not have the right to vote.

Third, Catholics pay for the system themselves, so why should we mind? This is an outright lie. The funding formula, as an example given, does not have a section that allocates money based on school support, making the school support relevant only to the election of school trustees. So everybody pays for the system.

Other motivation: We talk about the e"ducation Premier." It was found by the UN Human Rights Committee that the current system is incredibly wasteful. I will quote from the decision of the human rights committee in 1998: "According to counsel, the additional costs to maintain the separate system next to the public system have been calculated as amounting to \$200 million a year for secondary schools alone." As you'll see, my estimate brings that total today to \$463 million per year. This is probably the biggest amount of government waste in the system.

I submit to you that the only way a society can be multicultural is to treat all people equally. In terms of religion, this requires that the government be religiously neutral. The only way for our education system to do this is either to fund all religions or none. Funding all religions would be disastrously expensive and would let the provincial government decide what constitutes a religion, and can never be fair due to the population and economic disparities in different religious communities. Also, Newfoundland has tried this experiment and abandoned it. Let us not make the same mistake.

Ontario must follow Quebec and Newfoundland and adopt a one-school-system policy where all Ontarians can send their children, regardless of their religion. Religion is a personal matter and should be left to the parents and/or community of the child. History has shown us that government involvement in religion hurts both.

The government of Ontario must stand up and end this injustice for all Canadians and set an example to the world on human rights issues. Canadians pride themselves on being a world leader in human rights. Let's make that true.

**The Chair:** Thank you very much. We have about four minutes each, if there are any comments. We'll begin with the government side.

**Mr. Zimmer:** I understand your concerns on the school funding issue. What I was trying to get to in my earlier comments was, what do you think of Bill 107, as it's drafted, as a vehicle that would enhance the protection of human rights in Ontario?

**Mr. Ackad:** Considering that 66% of the Ontario population is paying for a system they cannot use, and are discriminated against using it, with section 19 not repealed in these amendments, it's incomplete and should not go forward. This is a huge injustice, and to put forward a human rights bill which does not correct this injustice is incomplete.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** I don't have any questions. I'd just like to thank you very much for taking the time to present to us today, Mr. Ackad.

1100

**Mr. Ackad:** Thank you.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** You display an ability to stay on message that many experienced politicians haven't acquired after 10, 15 and 20 years. Good for you. It's an admirable trait when you're promoting a particular theme.

Look, I understand the argument. There's a community out there. Heck, I think people with similar views managed to get into the pit bull hearings—didn't they, Mr. Zimmer?—and talk about the same issue.

But look, I hear you. I have no doubt that there are people who agree with you; I don't. Quite frankly, I believe the existence of the so-called Catholic system, the publicly funded Catholic system—and it was publicly funded well within my lifetime; I remember New Democrats playing a leading role in the Conservative government of the day in acquiring full funding for the Catholic system—to be a historical anomaly that nonetheless enriches our publicly funded educational community.

So you and I disagree; that's clear. But I say welcome to the committee, and I thank you very much for taking the time, effort and energy to come here. Once again, excellent spin skills. Staying on point in response to Mr. Zimmer was a model.

**The Chair:** Thank you very much.

#### CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

**The Chair:** The next presentation is from the Centre for Equality Rights in Accommodation. Mr. Fraser, welcome to the committee. You have 30 minutes, and you may begin.

**Mr. John Fraser:** Thank you.

**The Chair:** If I can have your colleague introduce herself for Hansard, that would be good.

**Ms. Michelle Mulgrave:** Michelle Mulgrave.

**The Chair:** Thank you. You may begin.

**Mr. Fraser:** I should mention that Michelle, up until recently, was CERA's manager of human rights case-work. She is now working at the tenant duty counsel program, but she has kindly agreed to participate in the submissions on behalf of CERA today, and I am very happy she's here with me.

**The Chair:** Mr. Zimmer?

**Mr. Zimmer:** Just a point of clarification so I'm not—did you present last—

**Ms. Mulgrave:** I was with the Advocacy Centre for Tenants Ontario. I didn't get a chance to speak during that. I was sitting at the far end.

**Mr. Zimmer:** That's right. Okay. Thank you. I had that in my mind.

**Mr. Kormos:** That's okay; a whole lot of people won't get the chance to speak at all.

**Mr. Fraser:** I'd like to thank the committee for agreeing to allow us to speak today, and I'm going to pass it on to Michelle now to talk a little bit about CERA, the organization, what we do and the people we work with.

**Ms. Mulgrave:** The Centre for Equality Rights in Accommodation is a non-profit human rights advocacy organization established in 1987 to ensure that Ontario's human rights protections in housing are effective for low-income and other disadvantaged individuals and families.

**The Chair:** Can I have folks slow down the pace for the sign language interpreter?

**Ms. Mulgrave:** Sorry.

**The Chair:** No; that's fine. Go ahead.

**Ms. Mulgrave:** For almost 20 years, we have worked with individuals facing discrimination in their attempts to access or retain housing, providing them with information on their legal rights, negotiating on their behalf with housing providers to change discriminatory policies and practices and representing them through the formal complaint process at the Ontario Human Rights Commission and at the Human Rights Tribunal of Ontario. All of our services are free.

Over the years, we have drafted and filed complaints on behalf of and represented hundreds of people in the human rights complaint process. Currently, we have 16 files which are either open or in the process of being filed with the commission and which represent 31 separate complainants. It is safe to say that no other organization in Ontario has had such extensive experience with the commission process as CERA.

We work directly with low-income and marginalized communities across Ontario and represent individuals from all of the protected groups under the Human Rights Code, including women, young families with children, people with mental and physical disabilities, youth, religious minorities, members of racialized communities, recent immigrants, refugees and people trying to survive on social assistance benefits. Our clients are people with

debilitating environmental sensitivities trying to get their landlords to recognize and accommodate their condition; they are newcomers to Canada who are told they can't rent an apartment unless they are willing to pay six to 12 months' rent in advance; they are single mothers receiving Ontario Works benefits who are turned away from the most affordable apartments they can find because they have children or because they are on welfare, or both. Over three quarters of our clients are women, many of whom face intersecting forms of disadvantage. While we don't screen our clients based on income level, they are overwhelmingly low income, with close to 60% receiving Ontario Works or Ontario disability support program benefits.

In addition to working with individual complainants, CERA spends a significant amount of time conducting public education workshops with a range of audiences, including housing seekers and community workers. We have consistently struggled to explain the relevance of Ontario's human rights process while regularly being confronted with the question: "What's the point? A complaint won't get anywhere." We hear similar sentiments from landlords while in negotiations on behalf of our clients. They often recognize that the likelihood of an individual filing a complaint is improbable and that even if one is filed, it will languish for years at the commission and probably end up among the 94% of complaints that are not referred to a hearing.

Most of the landlords we deal with have the resources to wait out and stall the current process, and they do. Even though CERA's services are free, our clients often do not have the emotional resources to see the entire process through, as most are struggling to survive. For unrepresented rights claimants, the process must be completely overwhelming and impossible to navigate.

It has been very difficult to adequately respond to the widespread cynicism around Ontario's human rights regime. However, our clients do not have options. A family receiving Ontario Works that is consistently turned down for apartments because of stereotypes about people on welfare does not have any other avenue for redress.

CERA firmly believes that it is not a viable option—particularly for the constituencies we represent—to simply allow discrimination to go unchallenged because the system is flawed. Furthermore, the system will only improve if people use it and if those users, consumers and advocates alike, demand change.

As an organization that sees our clients re-victimized in the current human rights system, CERA was delighted when the Ministry of the Attorney General announced its intention to initiate reforms to the current system, reforms that have been advocated by provincial and national task forces and many community voices, including CERA, for 15 years.

Bill 107 is not perfect. However, I echo the words of the chief commissioner of the Ontario Human Rights Commission, Barbara Hall, when she stated in her deputation before this committee that there is no perfect

piece of legislation. Creating a strong, fair and accessible human rights system, a system that has real teeth and truly responds to the needs of equality seeking communities, will be an ongoing process. Bill 107 and the recent amendments announced by the Ministry of the Attorney General are an excellent and groundbreaking opportunity to create the kind of human rights system we all want.

I'm going to move into Bill 107 and CERA's comments. Bill 107 proposes a radically new human rights system with three crucial components.

Complainants will have direct access to a hearing before the Human Rights Tribunal of Ontario. This will mean that our clients will finally have an opportunity to tell their story to a decision-maker. Under the current system, it's very difficult for our clients to be able to tell their story to a decision-maker.

The Ontario Human Rights Commission will no longer focus on the processing of individual complaints but will devote its resources to research, public education, policy reform and systemic advocacy. As the manager, I presented a number of human rights and housing workshops. When I was out in the community, I found many newcomers were unaware of their rights under the code. They did not even know the code existed. When I presented at youth shelters, some of the youth in the shelters had never heard of the code. So education is key. The second part of Bill 107, which is that the Ontario Human Rights Commission would focus its energy in the area of public education—is paramount. The third part of the bill, publicly funded legal supports, will be available to human rights claimants.

#### 1110

When Bill 107 was tabled at first reading, CERA and many other organizations that supported the legislation in principle had a number of concerns. We were very pleased to hear the government announce amendments last week which go a long way toward addressing those concerns. Based on our almost 20 years of experience working directly on human rights in this province, CERA fully supports Bill 107 as amended. We look forward to a human rights system in which complainants are given the opportunity, the agency, to control their own complaints and a commission that is able to focus on what it does very well: public education, systemic advocacy and creating public policy.

**Mr. Fraser:** Thanks, Michelle. I'm now going to go on and talk a little bit about the need for reform of the current process. In discussing this, I could have merely resubmitted a report that we submitted to the provincial standing committee on government agencies in 1994. I could have resubmitted it word for word because, sadly, the issues have not changed. While funding levels to the commission have varied over the years, the underlying structural deficiencies have remained constant.

No one here and no one who has presented is arguing that the current system works for equality seekers. Individuals and organizations, whether they are in support of Bill 107 or whether they are critical of the bill, all

believe that fundamental change is necessary. CERA's experience, the recommendations of the Cornish task force report in 1992, the La Forest report in 2000 and the experiences of many deputants at these hearings point to an urgent need for a new system—a system where all equality seekers have adequate public legal supports, the right to have their complaints heard before a competent Human Rights Tribunal, and where the Ontario Human Rights Commission can devote itself to truly advancing human rights in this province.

In addition to the organizations and the task force that I mentioned earlier, international human rights bodies have also criticized the inadequacy of Canada's national, provincial and territorial human rights systems, including Ontario's. In 1999 and 2006, the UN Human Rights Committee recommended that governments in Canada ensure that "relevant human rights legislation is amended at federal, provincial and territorial levels and its legal system enhanced, so that all victims of discrimination have full and effective access to a competent tribunal and to an effective remedy." As well, the UN Committee on Economic, Social and Cultural Rights, in its second periodic review of Canada in 1998, urged governments across Canada to strengthen enforcement mechanisms in human rights legislation so that "all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups."

CERA has worked closely with the Human Rights Commission for almost 20 years now. While we have sometimes been at odds, CERA has always believed that the commission staff are truly dedicated to the promotion and realization of human rights in Ontario. We do not believe that the failings of the current system can or should be placed at the feet of the dedicated individuals who struggle every day within an unworkable framework. The problems with Ontario's human rights system are endemic and structural.

I quote now from our 1994 submission to the standing committee on government agencies:

"The Human Rights Commission has been set up for failure. It has been given far too many roles to play at the same time. We cannot expect the commission to provide good advice to rights claimants and respondents at the same time, [to control the intake process] of all human rights complaints in the province, to investigate them, to mediate and settle them, to determine whether they warrant a hearing or not, to litigate them before boards and in courts, and to control public education and action on all issues of systemic discrimination.... The present system of human rights [in Ontario] is based on an outdated notion of rights and of rights claimants. It is a paternalistic system that appropriates control of the process from the claimant and invests significant powers in a bureaucracy. In no other area of the justice system is there so little control by the person whose rights are infringed."

Under our current system, a rights claimant must participate as a mere bystander as the complaint works its

way through the commission process, from mediation to investigation to conciliation and, ultimately, to a decision, made behind closed doors, about whether their complaint warrants a hearing. To add insult to injury, if the commission decision is negative, there is no avenue for appeal.

This system, as other deputants have affirmed, "offers an inferior standard of justice to equality seeking individuals and groups" and is unique in Ontario's legal system. CERA believes, as we stated in 1994, that Ontario has "moved beyond the time when it was considered appropriate for equality seekers to hand control of their rights claims to a government bureaucracy and wait years to see if they will be deemed worthy of receiving a hearing. Equality seekers are quite capable of identifying important systemic barriers and taking their own equality issues forward if only they are provided with the [legal] resources needed."

We have heard many comments at these hearings on the importance of the Statutory Powers Procedure Act, the SPPA, in ensuring fairness for those who file human rights complaints, from those who agree with allowing exceptions to its applicability to those who want the SPPA to be fully applicable. I am not a lawyer and do not propose to be an expert on the SPPA. However, I do have thoughts on the issue of fairness and those issues that comprise the notion of natural justice. I believe, and CERA's experience is, that the current commission process is fundamentally unfair and that closed-door, private decisions being made on issues that are critical to people's lives, existence and dignity deny individuals due process and natural justice.

The Human Rights Code is a quasi-constitutional piece of legislation. It is the supreme law in Ontario. However, CERA believes that there currently exists a second-class system of justice for rights claimants and that structural inequality has been built into the very system that is intended to promote equality.

**Ms. Mulgrave:** I will now speak to myths about Ontario's human rights system. As an organization with extensive ground-level experience within Ontario's human rights system, it is important that CERA speak to misconceptions about the commission that have plagued the debates around reform.

Supporting individual human rights claimants is not part of the commission's mandate. The commission acts as a neutral processor of complaints and only becomes a party if a complaint is referred to a hearing before the Human Rights Tribunal, a separate body. As we know, only about 6% of complaints ever get to this stage. Moreover, at the hearing, the commission does not represent the complainant. Commission counsel attends on behalf of the commission and in the public interest. Although the commission's interests and the interests of the complainant will usually intersect, this is not always the case. CERA has been involved in many cases at the tribunal level where the commission took an opposing position to the complainant. Accordingly, a complainant who wants independent counsel to represent his or her interests must

hire a lawyer or rely on an organization like CERA or a legal aid clinic. It is incorrect to suggest that the commission currently provides support for human rights claimants. The reality is that there are virtually no publicly funded supports available for claimants in the current system.

There has also been concern expressed that under Bill 107 applicants will lose the right to a publicly funded investigation of their complaint. Investigations are not conducted for the benefit of the complainant. Investigations are conducted in a neutral fashion for the purpose of determining whether or not a complaint will proceed to a hearing. In the majority of cases, these investigations result in the dismissal of the complaint.

Our clients, when their complaints are dismissed after investigation, have actually invested a fair amount of time. They have experienced discrimination, they've spoken to our organization, the commission has been involved; and then to go through an investigation and to have your complaint dismissed—many of our clients just don't understand why their matter is not considered discrimination. Going through the process of telling their story over and over again, our clients relive their experience, without a resolution.

Finally, there has been criticism of the proposed reforms on the basis that claimants will need, and not have, legal representation. As noted above, complainants need legal representation now. The barriers facing unrepresented complainants in the current system are monumental, particularly if the complainants are low-income or otherwise marginalized. Bill 107, as amended, explicitly provides for publicly funded legal supports. These resources are not provided in our current human rights system.

1120

**Mr. Fraser:** While CERA fully supports Bill 107, as amended, we would like to talk about some other proposed amendments that we think would be valuable. As stated earlier, CERA believes that the proposed amendments announced by the Ministry of the Attorney General address many of the concerns we had with the initial bill. However, there are several additional changes which CERA believes will further improve what we feel is a very strong piece of legislation.

The first change relates to the human rights legal support centre. CERA was very pleased to hear that the establishment of a legal support centre providing a full range of services to human rights claimants would be enshrined in the legislation. However, the success of the centre and the broader legal support system for human rights claimants will depend, obviously, on adequate financial resources. To ensure this, CERA recommends that Bill 107 provide for an independent audit of the centre and the broader legal support structures, which would include the adequacy of funding, within two years of proclamation.

Our second suggested amendment relates to making an application to the Human Rights Tribunal. Bill 107 does not permit third parties, such as community

organizations, to make applications on behalf of equality-seeking individuals. In CERA's view, this is problematic, as many of the individuals we serve are extremely disadvantaged and not in a position to bring forward complaints, though they may want to. CERA is often in the position of not being able to challenge blatantly discriminatory conduct and policies that are frequently systemic in nature because prospective applicants are unable, for a variety of reasons, to file a complaint. The fact that the Ontario Human Rights Commission, under Bill 107, will be able to bring forward its own complaints is very positive. However, this is not enough. Community-based organizations that work on a day-to-day basis with equality-seeking individuals and communities are well-placed to identify individual cases of discrimination with the potential for systemic remedy. In addition, the commission and community-based organizations may differ in their opinions of which cases are the most appropriate to take forward. Therefore, we recommend an amendment allowing third-party organizations to bring forward complaints.

With respect to the limitation period proposed in Bill 107, the extension of the proposed six-month limitation period for filing an application with the Human Rights Tribunal to 12 months is laudable, and we definitely support this. However, there seems to be no legitimate reason for not extending the time for filing an application to two years, which would be in line with the general limitation period for bringing other civil legal claims in this province. CERA cannot understand the reason for affording human rights claimants a shorter time frame to bring their claims forward.

Bill 107 provides that the Human Rights Tribunal may consider in its adjudication of applications any documents developed and published by the Ontario Human Rights Commission. CERA, along with many other advocates and community organizations, believes that this section of Bill 107 should be amended to make it mandatory for the tribunal to consider commission documents; so "may" should be replaced with "shall."

Finally, we'd like to make a few comments about the proposed anti-racism and disability rights secretariats. Bill 107 provides for the establishment of two secretariats, the anti-racism secretariat and the disability rights secretariat. These secretariats would undertake research, make recommendations and facilitate the development of public education programs, among other things. While there are many commendable reasons for establishing the secretariats, it's CERA's view that ultimately they do not represent a good approach to promoting anti-racism and disability rights in Ontario. One problem is that the secretariats do not appear to have any substantial human rights enforcement or promotion powers. There is a very real concern that anti-racism and disability rights will be relegated to under-resourced and ineffective parts of the Human Rights Commission.

In our opinion, these secretariats also do not reflect the reality of discrimination, and certainly the discrimination experienced by our clients. In our experience, individuals

dealing with discrimination related to their housing frequently experience discrimination on a number of different, interrelated grounds. For example, when an aboriginal single mother receiving social assistance applies for an apartment, she will frequently experience discrimination based on her race and colour, her family and marital status and her income source—all at the same time. The secretariats will create artificial human rights silos, when in CERA's view the commission should be approaching equality rights in an integrative manner that recognizes the inter-sectionality of the various code grounds of discrimination.

Finally, we are not comfortable with the hierarchy of rights that the secretariats establish. For these reasons, CERA recommends that the secretariat section of Bill 107 be removed and the mandates of the secretariats be incorporated into the overall mandate of the commission so that these issues can be dealt with in a holistic manner and in what we believe to be a manner that really addresses human rights violations.

I'm just about at the conclusion. Mr. Chair, can I double-check how much time we have?

**The Chair:** You have about four minutes.

**Mr. Fraser:** At CERA, we see the immense social cost of our ineffectual human rights system. We applaud the government for recognizing that the current system offers an inferior standard of justice to equality-seeking individuals and groups. To allow the present system to continue is to send a destructive message that those who face discrimination remain second-class citizens in our province.

CERA believes that everyone involved in this debate is truly dedicated to strengthening our human rights regime. Like many others, we have been dismayed by what has at times been a divisive debate. What we hope can be achieved is a human rights system that truly protects and promotes the rights of those it was intended to protect, the most marginalized and disenfranchised in our community.

Last Wednesday, the chief commissioner of the Ontario Human Rights Commission appeared before this committee and said the following: "I hope that we're all agreed that the status quo is not an option. There's important work to be done, and reform is needed to complete the work.... The commission needs to focus its energy on making social change happen if we're going to achieve a culture of human rights. We need to tackle the big, systemic issues through public inquiries, commission-initiated complaints, public education and outreach."

When the commission itself calls for the kind of change that we see in Bill 107, it cannot and should not be ignored. As have all those individuals in the debate around Bill 107, CERA believes that change is necessary. We also believe that Bill 107, as amended, will effect the appropriate change. Allowing rights claimants direct access to a hearing with publicly funded legal supports and permitting the commission to devote itself entirely to promoting human rights sends a strong message. In CERA's view, it signals that Ontario finally takes human rights seriously.

If we have any more time, I would like to give Michelle Mulgrave an opportunity to talk about some specific examples. Do we have time for that?

1130

**The Chair:** Two minutes.

**Mr. Fraser:** Two minutes.

**Ms. Mulgrave:** Specific examples—

**Mr. Fraser:** Just in your experience as a caseworker.

**Ms. Mulgrave:** As a caseworker, I guess one of the biggest issues for our clients is that they require resolution, and they require the resolution quickly. Many have been forced to move on with their lives with this baggage of a discriminatory experience.

They also struggle with the fact that no one believes them. When they call CERA, we start from the position of, "Give us the information, and we'll speak to the landlord and try to find out what took place." But then, if they do have to file, dealing with the commission at times creates another barrier. So for our clients, being believed, having an opportunity to tell their story to a decision-maker is paramount, and also resolving the matter very quickly allows them to move on with their lives.

So an individual who requires a ramp and asks the landlord, "Can you build a ramp?" and the ramp is not built—a client would have to file a complaint and wait for this entire process without that ramp, and it's not resolved quickly. So we have individuals who are waiting and waiting for accommodation to meet their medical needs while their matter is in queue under the current process.

This bill allows our clients an opportunity to (1) be heard and tell their story to a decision-maker and (2) to potentially resolve the matter in a timely fashion so that they can truly move on with their lives.

**The Chair:** Thank you very much. That was right on the time limit.

**Mr. Kormos:** Chair, to legislative research, please: Ms. Drent, first of all, thank you very much, and your colleague Mr. Fenson, for the papers that you provided to us today. The submission of this group, pages 5 and 6, in reference to the investigations by the commission, indicates that in the majority of cases these investigations result in the dismissal of the complaints. The data from the Human Rights Commission indicates that only 11.3% of complaints are dismissed in that manner. Could you please look into this and determine whether or not, again, the numbers from the commission are fraudulent or incompetent or corrupt? I'm alarmed that there's such a disparity between the observations of these people, whom I have no reason to disbelieve, and the report by the commission. This is a shocking—we could have a criminal matter inside the commission. Barbara Hall could indeed be a manipulative commissioner.

The other issue I would put, Chair: I want to file with the committee the letter from Barbara Hall dated November 21, in which she says, "On behalf of the commission, I urge you to withdraw the motion for closure." That's her letter to Dalton McGuinty. I agree with submitters that when the commissioner says something, people

should pay attention. I'm going to give this to the clerk so this can form part of the committee's record.

**Mr. Fraser:** May I quickly respond to Mr. Kormos's comment about the statistics, just in 20 seconds? I think the confusion may be around—

**Mr. Kormos:** Come on, some people aren't going to be here at all. Ms. Mulgrave was here twice.

**The Chair:** I think you've had your 30 minutes. Thank you very much. We have to move on. We're running late.

### 519 ANTI-VIOLENCE PROGRAM

**The Chair:** The next presenters are the 519 Anti-Violence Program. Good morning, sir. You have 30 minutes. You may begin.

**Mr. Howard Shulman:** Thank you. I wanted to provide some background. The 519 Anti-Violence Program runs out of the 519 Church Street Community Centre in downtown Toronto. The catchment area of the 519 includes the Church-Wellesley village, which is home to Canada's largest lesbian, gay, bisexual and transsexual population.

The 519 Anti-Violence Program was established in 1991 to compile reports and statistics of bashing and to advocate and support individuals in Toronto's queer community who have experienced harassment or assault based upon their actual or perceived sexual orientation or gender identity. This program is unique in Ontario, as there is no other agency that specifically deals with these issues. From the start, the 519 Anti-Violence Program has worked with other equity-seeking agencies and groups combating hate.

I'd like to thank you for the opportunity of speaking here today, especially in light of the government's decision to invoke closure on this controversial bill. This has become almost a protocol of the McGuinty government. The government refused to hold open, accessible public consultations on human rights reform before it brought forward this widely-criticized bill, and now they've decided that they do not want to hear from anyone on the long waiting list of presenters, in effect duplicating for many the inherent systemic response they live with every day.

It is utterly unfair to cancel public hearings for community groups and individuals, especially those who have waited for months to have a chance to have their say on this controversial bill. The government should not use its majority in the Legislature to muzzle the many people who have concerns about this bill. Whether the bill is a good bill or a bad bill, people deserve the chance to have their say.

This closure motion is a breach of the government's earlier commitments on affording hearings to everybody who wants to present. Even as late as last week, the Legislature's standing committee on justice policy unanimously approved a report scheduling hearings through December, asking the Legislature to permit hearings to continue into the winter. By that time, some 200 people

had signed up. The government has been using tax dollars to advertise public hearings that the McGuinty government is now going to cancel. This is inconsistent with the government's commitments to bring democratic renewal to Ontario.

The motion also appears to call for the entire clause-by-clause debate on Bill 107 to be crammed into a single day at the standing committee. Normally, MPPs at the standing committee are given whatever time they need to debate amendments to the bill. The motion directs that the third reading debate in the Legislature be restricted to a single day. Normally, MPPs are given the time they need to debate a bill on third reading.

When the previous Harris government used such closure motions, the McGuinty Liberals blasted them. They called closure motions undemocratic. The McGuinty Liberals ran in 2003 on a platform of democratic reform. It is a cruel irony that in the name of supposedly giving direct access to a hearing in the human rights system, the McGuinty Liberals are denying a hearing to so many people who want a voice in what Bill 107 does for the protection of their human rights.

Originally, the Human Rights Code did not include sexual orientation; I just wanted to create the context for that. It was certainly something that my predecessors fought hard to win in the 1970s and the 1980s.

For years, it has been clear that the Ontario human rights system needs to be fixed. This is because it has been seriously underfunded for years and needs administrative reforms. However, Bill 107 is itself seriously flawed. It will likely make things worse, not better. I have some suggestions on how I think it can be made better. But even before I do that, I need to tell you that if this government is unwilling to provide increased and sustainable funding for the Ontario Human Rights Commission, anything that follows is me just chatting with you. If the government is truly committed to making human rights a priority in this province, they need to show people the money.

The Ontario Human Rights Code makes it illegal for anybody in the public or private sector to discriminate against a person because of his or her sex, religion, race, disability, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities. It requires employers, stores and others offering goods, services and facilities to accommodate the needs of disadvantaged groups protected by the Ontario Human Rights Code, up to the point of undue hardship.

### 1140

If a person believes an organization or individual has discriminated against him or her because of their sexual orientation, race etc., he or she can file a formal document called a human rights complaint with the Ontario Human Rights Commission. In that document, the complainant explains the events that they say amounted to unlawful discrimination.

Now, the Ontario Human Rights Commission's job is to enforce the code. One of its most important duties is to

investigate human rights complaints and to try to negotiate a settlement. Human Rights Commission investigating officers have powers to publicly investigate discrimination complaints.

If the Human Rights Commission investigates a human rights complaint and decides that the complaint has merit under the code, and if it can't work out a voluntary settlement between the complainant and the respondent, its job is to take the case to a separate, independent tribunal, the Ontario Human Rights Tribunal. At the tribunal, the Human Rights Commission is the public prosecutor that prosecutes the case. It sends a publicly paid Human Rights Commission lawyer to present the complaint. Discrimination victims can also bring their own lawyer. It is important to note that they don't have to, though.

Under Bill 107, if a person has been discriminated against, they will have to file a human rights complaint with the Human Rights Tribunal. They must investigate their own case. The Human Rights Commission loses its investigation powers.

The 519 Anti-Violence Program strongly believes that Ontario's human rights enforcement system needs to be significantly improved. It is too slow and backlogged. The commission's gatekeeping function can benefit from procedural reforms to ensure that meritorious cases are taken forward to the Human Rights Tribunal. The Human Rights Tribunal also needs significant reforms.

But Bill 107 doesn't provide an effective solution to these problems. It will probably make things worse because it abolishes victims' decades-old legal right to have the Human Rights Commission publicly investigate all non-frivolous rights complaints. It abolishes discrimination victims' right to have the Human Rights Commission publicly prosecute a human rights complaint, if the evidence warrants it and if the parties don't settle the case. In this way, Bill 107 takes away from important rights that lesbian, gay, bisexual and transgender people have fought for for so many years.

The bill would also let the Human Rights Tribunal adopt rules that could deny the time-honoured right of all parties at a hearing to be represented by a lawyer, to call relevant evidence and to cross-examine opposing witnesses.

For the first time, it lets the Human Rights Tribunal charge user fees for going to the tribunal. It could expose human rights complainants for the first time to have to pay for their opponent's legal costs at the Human Rights Tribunal hearings if they lose. Now, the tribunal can only order the Human Rights Commission, not the discrimination victim, to pay the legal costs of the party accused of discrimination.

Bill 107 would dramatically reduce the right to appeal from the tribunal to the court. Now, anyone who loses their case in the tribunal has the broadest right to appeal to the court. Bill 107 lets the loser go to court only if the tribunal ruling is proven to be patently unreasonable, which is a far tougher test.

Bill 107 will unfairly force thousands of discrimination cases now in the human rights system to start all

over again, but without the benefit of the Human Rights Commission's help. Many have spent years trusting that they could continue in the current system.

Contrary to major government commitments, it doesn't ensure that every human rights complaint will have free, publicly funded legal advice and representation. It merely lets the government fund legal assistance if it wishes. It doesn't entrench the government's promised human rights legal support centre. It doesn't require legal services to be delivered by lawyers.

Bill 107 doesn't keep the government's commitment that all discrimination victims will be given a hearing before the Human Rights Tribunal. It lets the Human Rights Tribunal defer a hearing or throw out the discrimination complaint without a hearing.

Bill 107 doesn't eliminate or reduce the chronic backlog of human rights cases. It shuffles the lineup from the Human Rights Commission to the Human Rights Tribunal. It doesn't set enforceable deadlines to ensure cases are heard and decided within a reasonable time.

Contrary to government commitments, Bill 107 significantly weakens and does not strengthen the Human Rights Commission's ability to bring its own cases to challenge systemic discrimination. Now, the commission can launch its own complaints in any case. It has investigation powers to get evidence to support its case. It can seek sweeping remedies to compensate discrimination victims for past wrongs and to prevent future discrimination.

Bill 107 largely privatizes human rights enforcement. It removes the Human Rights Commission from most discrimination cases. This makes the commission less effective and relevant when it does public policy, advocacy and public education.

Bill 107 will dramatically shrink the human rights system's capacity to advocate for and protect the public interest. Now, the Human Rights Commission can seek remedies both for individual discrimination victims and to address the broader public interest. It can do so when settlements of cases are negotiated and at Human Rights Tribunal hearings. In contrast, under Bill 107, the commission won't be involved in negotiating most case settlements. It won't have carriage of or even be present at many Human Rights Tribunal hearings.

The 519 Anti-Violence Program believes it would be better if the government started this whole process from the beginning, held proper time-limited public consultations and then introduced an appropriate human rights reform bill.

To achieve this, we would suggest the following: first, that individuals should retain their rights to public investigation. The Human Rights Code now gives every discrimination victim who files a timely and non-frivolous complaint the right to have the Human Rights Commission publicly investigate his or her human rights complaint. If a complaint cannot be resolved between the parties through mediation, the commission must investigate the case.

Section 33 of the code now gives the commission extensive investigatory powers, including the ability to

enter businesses, interview witnesses, request documents and seek a search warrant to compel access to relevant documents and other physical evidence. Under the current code, based on its investigation, the commission is required to decide whether a Human Rights Tribunal hearing is warranted in a case that isn't voluntarily settled by negotiation. The commission can refer the case to the tribunal for a full hearing on the complaint.

At the Human Rights Tribunal hearing, the commission is the public prosecutor. The commission has carriage of the case to prove that the complainant was the victim of discrimination. The commission interviews and calls all the witnesses. The commission is supposed to argue that the discrimination took place. The prosecutor, therefore, effectively represents the complainant's interest as well as that of the public. If expert witnesses are needed, which is increasingly the case with human rights cases, the commission is responsible to find appropriate experts, to hire and pay them, and to present their evidence. Expert witnesses can be very expensive.

Under the current code, the complainant has the right to have a lawyer present at the hearing, call witnesses to testify and cross-examine witnesses who testify against the complainant. However, the complainant doesn't have to do any of this if he or she doesn't want to.

In contrast, Bill 107 would totally abolish the complainant's rights to have his or her case investigated by the Human Rights Commission. Bill 107 would repeal section 33 of the code. That takes away from the commission its power and duty to investigate human rights complaints. Bill 107 would force all discrimination victims to go directly to the Human Rights Tribunal, without a prior Human Rights Commission public investigation of their complaint.

**1150**

A few very complainants can afford to pay for their own lawyer, their own investigation and their own expert witnesses. They may prefer Bill 107, because it will let them go right to the Human Rights Tribunal. They may want to take their case directly to the tribunal, without the Human Rights Commission's help.

Far more complainants cannot afford lawyers and investigators. Certainly, that has been the case with most of the clients we've had at the 519 Anti-Violence Program. They have been unable to get legal counsel, despite Legal Aid Ontario, which has its own set of criteria that also disallows a lot of people from accessing lawyers. We have been working with the Law Society of Upper Canada in trying to make lawyers accessible, but this can be difficult as well because the lawyers are now working on a pro bono basis. The pro bono system, especially the latest directive from the Law Society of Upper Canada, came when Chief Justice McMurtry basically stated that he was very shocked to see the number of unrepresented clients who were going to court. So this is going to remain an ongoing issue.

Certainly, from the point of view of the 519 Anti-Violence Program and some other agencies that we've spoken with, having access to legal counsel needs to be

ensured because, under Bill 107, discrimination victims will have to do their own investigations. They will have to gather their own evidence, identify their own witnesses, and hire their own experts. This creates a serious barrier to vulnerable discrimination victims enforcing their rights. Discrimination victims can suffer serious emotional harm due to the violation of their human rights. The government shouldn't expect such individuals to investigate their own claims, and I believe the prior deputant spoke of that. My background is as a social worker and certainly there is recurring and vicarious trauma as people have to report again and again and again the discrimination they faced. Oftentimes, it can lead to triggering other emotional or traumatic experiences in an individual's life. So it kind of creates that other level of difficulty.

Bill 107 would take away a decades-old fundamental statutory entitlement to a publicly funded investigation. Victims of discrimination should not lose rights in any human rights reform. If the government insists on amending the code to provide so-called direct access to the tribunal, it should give human rights complainants the choice between going directly to the tribunal and asking the Human Rights Commission to investigate and prosecute their case.

If the government is convinced that the so-called direct access route is so attractive, it loses nothing by giving Ontarians the option of either direct access or exercising their decades-old legal right to a public investigation and, where warranted, public prosecution of their case by the Human Rights Commission. If discrimination victims prefer to go to the commission, then the government shouldn't take that right away from them.

The option of giving Ontarians their choice of route is a more reasonable middle ground than the government's proposal of abolishing the public enforcement regime that Ontarians now enjoy and forcing them down a different road.

We believe that the Ontario Human Rights Code should ensure full legal support at tribunal hearings. The current code gives human rights complainants a hearing at the Human Rights Tribunal and the right to assistance in the form of legal counsel serving as the public prosecutor. At tribunal hearings, the commission now has carriage of the complaint. The commission's role is to show that the complainant was the victim of discrimination.

At the tribunal, each complainant also remains a party to the hearing. He or she can participate actively by having their own lawyer, calling witnesses, cross-examining opposing witnesses, and presenting argument to the tribunal.

By eliminating the commission's role in investigating and referring complaints to the Human Rights Tribunal, Bill 107 also eliminates the role of commission counsel as lead public prosecutor at all tribunal hearings into human rights complaints that discrimination victims have brought. This has serious negative consequences, for it leaves discrimination victims without assured, expert, publicly funded legal support at tribunal hearings.

The majority of discrimination victims cannot afford to pay for their own lawyers. Under Bill 107's system, with the Human Rights Commission unable to investigate cases and largely unavailable to prosecute them, it will be impractical for most to pursue a human rights claim without effective legal assistance and support.

Most discrimination victims don't know how to use the human rights system. Fewer will know how to navigate Bill 107's newer system. Many will find the prospect of proceeding alone terrifying. It is unfair to expect any discrimination victims to represent themselves at a Human Rights Tribunal hearing, particularly when they must face the person or organization that has discriminated against them. Again, it brings up the issue of re-traumatizing clients, certainly from the anti-violence program's clientele. A lot of our clients are recently-arrived individuals from places on the globe that disallow homosexuality or that discriminate against transsexual/transgendered individuals, so again, it creates a more difficult barrier for people to get over.

Members of equality-seeking groups have the most to lose if they are denied effective state-funded legal representation by lawyers for their case. As they are among the most marginalized in our society and are over-represented among the poor, for the most part they do not have the resources themselves to undertake or finance the legal advocacy which the commission is now statutorily obliged to undertake at all tribunal hearings.

It is all the more important to ensure that at all tribunal hearings, the complainant's perspective is addressed by a publicly funded lawyer, considering the resources available to most respondents. Landlords, service providers, employers or government departments and government agencies usually have their own lawyer. It is not unusual at tribunal hearings for respondents to be represented by some of Ontario's largest law firms. They vigorously defend the respondent, making every objection and argument imaginable. If the discrimination victim does not have legal support, they will be at a serious disadvantage.

The Cornish and La Forest reports on human rights reform, which the government says this bill implements, emphasize that it is vital for human rights complainants to have effective representation at tribunal hearings. The Cornish report stated that, "The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions."

Second, many if not most people who make human rights claims need assistance and support. Often they are hurt, angry, confused and afraid. Without assistance, they cannot enforce their rights. Opening up access to a hearing may be a hollow achievement if support and advocacy are not provided.

A third reason why advocacy services are essential is that without them, the hearing process for rights claims at the Human Rights Tribunal will have difficulty functioning efficiently and fairly. While staff of the new

tribunal can and should provide information on how their system works, it would be wrong to suggest that they can fill an advocacy role. In order for claims to be processed efficiently at the tribunal, claimants must have access to trained, publicly funded advocacy services.

Properly trained advocates will not only help prepare claims to go before a hearing but will also assist in resolving claims through the various means of mediation. They will refer people to other services if the issue they raise does not come under the code.

#### 1200

It is also important that at a tribunal hearing the legal support that a complainant receives is provided by a lawyer. Non-lawyers such as paralegals or community legal workers are not able to provide the level of service needed at hearings. As noted above, respondents are typically represented by a skilled, well-financed private law firm.

Bill 107, in effect, takes away a fundamental entitlement to a publicly funded prosecutor. Again, victims of discrimination should not lose their rights in any human rights reform process. If the government insists on amending the code to provide direct access to the tribunal, it must entrench the provision of full legal support by lawyers in the bill. It is important that the bill be amended to make it do what the government says it does. The government's commitments, which are very substantial in scope, have raised community expectations. We believe that there should be guaranteed access to hearings.

Those who support the government's plans for human rights reform argue that the human rights commission does not send enough valid cases to the tribunal for a full hearing. They object to the commission's broad gatekeeping function, which lets it decide whether a hearing is needed. They argue that it is important that all cases which are brought in good faith be fully heard by the human rights tribunal. They have claimed that no one should have their human rights complaint dismissed without a hearing.

The government claims that Bill 107 responds to that line of argument. The Attorney General promised that Bill 107 would give all human rights complainants a so-called guarantee of direct access to the tribunal. He has said that Bill 107 guarantees that everyone will get their day in court; however, Bill 107 does not ensure this. It doesn't do what those who support the government's plans have called for and what the government says it will do.

Bill 107 doesn't ensure a right to a hearing for every complainant. To the contrary, it will let the tribunal dismiss a complaint on several grounds without holding a hearing, including some of the grounds the commission currently uses to dismiss cases without a full hearing. It doesn't eliminate the gatekeeper; it merely moves the gatekeeper to the tribunal and judicializes this function.

To make Bill 107 do what the government claims it does to prevent the undue judicialization of gatekeeping functions and to remove a new procedural barrier at the

tribunal, Bill 107 should be amended to eliminate the tribunal's power to dismiss or defer a human rights complaint without first holding an oral hearing.

Under the current code, the human rights commission must attempt to conciliate a complaint. Amongst other things, the commission offers mediation services. The tribunal also offers voluntary mediation services. Under the current system, mediation is voluntary. Mediation can be very—

**The Chair:** There's one minute left, if you want to just finish up, please.

**Mr. Shulman:** Sure.

Under the current system, mediation is voluntary. Mediation can be very constructive and resolve many complaints; however, it is not suitable to all cases. Thank you.

**The Chair:** Thank you very much for your presentation. Mrs. Van Bommel?

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Excuse me, Chair; I'm missing page 17 of the presentation. I may be the only one, but if I could get page 17 of the presentation before the presenter disappears.

**The Chair:** Does the opposition have page 17?

**Mr. Kormos:** Yes, that deals with the right to appeal, which is also a recommendation of Barbara Hall, who appears to be increasingly ignored by the government.

**The Chair:** Thank you.

#### MARIE BONGARD

**The Chair:** The next presenter is Ms. Marie Bongard. Welcome to the committee, Ms. Bongard. You have 20 minutes. You may begin.

**Ms. Marie Bongard:** Do I have 20 minutes to get set up? Hopefully that's extra.

**The Chair:** Sure.

**Ms. Bongard:** First of all, I would like to thank you for the opportunity to speak at this hearing. I would first like to apologize for some typing errors that I had, so it had to be redone. I would also like to refer to my first paragraph. I can't possibly read all of the written submission; I don't have the equipment here to read it. Anyway, I would like to refer to my first paragraph on page 1. I wrote this submission on September 21. At that time, I thought the Toronto public hearings had already taken place and I wasn't selected, so I had forwarded a written submission at that time.

I don't have many new points to make, but I would like to draw attention to some of them. I still—is there any water here? Thank you. I still feel that the hearings should have stretched to more centres. Now we're finding out that they're going to be cancelled completely. Many individuals, especially people with disabilities, find it too difficult and too costly to travel. Transportation is certainly a big issue for them. For instance, in my case, because I can't jump in a car and drive, I must depend on public transportation as well as on an attendant. For instance, today, the bus—this was unusual,

because every Wednesday the bus lines we use give the ticket at half price, so it was \$17. Because I am registered with the CNIB and I'm legally blind, my attendant went for free. We still had the taxis to come from the out-of-town bus terminal to here; that will total \$37. This doesn't include the cost of our meals for the day. We left Peterborough at 7:45 a.m., and we won't be able to get a bus out of here until 4:30 tonight. Now, if it had been a regular day, another day, it would have been \$34. With the taxis, that's \$54. Because I'm privileged with the bus lines I take—in some cases, other disabilities have to pay for the attendant; or there might be a reduction. So someone else might have to have paid \$81 plus the cost of meals, and that would be two meals out. I'm sure you can take into consideration what that might have been. That's my feelings about why I feel there should have been more centres involved.

You'll also notice that I have raised many questions throughout my written presentation. It seems that Bill 107 in its present form has many flaws. At the end of my submission, on the last two pages, I have listed points that I feel would make the bill stronger and safeguard the human rights of Ontarians.

#### 1210

To me, the powers of the Human Rights Commission should be increased, not decreased. It is most imperative that the Accessibility for Ontarians with Disabilities Act be protected. Persons with disabilities applauded the government in 2005 when the AODA was passed. It appeared to be strong and effective, with the Human Rights Commission to be the enforcing body.

It was originally brought forward by the Ministry of Citizenship and is now being implemented by the Ministry of Community and Social Services. This, to me, in itself could be a conflict of interest. There could be claims against this ministry because it's the same ministry that also dispenses Ontario Works and the disability benefits, the ODSP.

I feel that the implementation of this AODA should have been given or should have been left with the Human Rights Code or some other ministry that does not have such a direct contact with individuals who may feel they are being discriminated against by that ministry. There should be some outside watchdog.

Yes, I feel that the backlog of human rights claims needs to be dealt with in a more timely manner. That's why I have suggested a 90-day limit to start the process, but it should not be at the expense of a claim not being properly investigated or prosecuted. Claimants need to be protected, not re-victimized. Claims need to be fully investigated and prosecuted and not dismissed behind closed doors. A watchdog such as the Human Rights Commission is needed to carefully scrutinize the process.

The rights of claimants—that's people in Ontario—need to be protected. Claims need to be processed in a fair and accurate manner. Claimants need an advocate throughout the entire claims process—the assistance of a third party or a strong enforcement party. I feel that claims need to be heard. If the Human Rights Code's

powers are reduced, the tribunal has too much power. If amendments such as what I have listed—now, that's items 3, 4, 7, 8 and 9; that's my last two pages—were implemented, it would curb this problem.

I'm also going to mention cost. Under the present bill, it is unclear how claimants will be able to cover the cost of the process. This would be that the right to a public investigation, a public lawyer and a public hearing need to be legislated. The human rights of all Ontarians must be protected. A strong enforcement body will ensure this.

I would like to thank you so much for listening. I also would like to mention that I am a member of the Council for Persons with Disabilities, which serves cross-disabilities in the greater Peterborough area. It's also the advisory committee to the city and county of Peterborough as they implement their portion of the Accessibility for Ontarians with Disabilities Act.

Also, a representative from the Canadian Hearing Society mentioned how difficult it is for them to access government services. I echo that. It is very hard to get anything in alternative format from the government, even though this is part of the AODA.

Thank you very much for listening.

**The Chair:** Thank you for your presentation. We have about three minutes for each side. We'll begin with Ms. Elliott.

**Mrs. Elliott:** Thank you very much, Ms. Bongard, for taking the time to come to present to this committee all the way from Peterborough. It is very much appreciated that you did so at considerable time and expense to yourself.

You have raised some very significant issues, issues about which we share your concern, particularly with respect to the fact that not everyone is going to be able to be heard, and everyone has a different perspective to bring to the table. It is most unfortunate that we are not going to be able to hear from everyone, but I really appreciate your being here, bringing your perspective to us. I can assure you we take it very seriously. Thank you very much.

**Mr. Kormos:** Thank you very much, Ms. Bongard. I appreciate your comments. You've provoked me with respect to two issues. One is the issue of oversight of the commission/tribunal, either in its current form or in any future form. I am going to ask Ms. Drent from legislative research to find out for us if the commission and its tribunal are currently subject to the oversight of the Ombudsman—I don't believe they are—and if there is anything in the new bill that will provide for that. The Ombudsman, for instance, in his proposal around Bill 103, which is the police oversight scheme, suggests that there should be Ombudsman oversight of that quasi-judicial process. He talks about, who's guarding the guards?

The other issue—and I want government members to bear with me for 30 seconds—is your comment about access to government in all of its respects, not just into the building here. Because it's an old building, even that is pretty difficult. We witnessed it last week with respect

to Mr. John Rae, who offered up his comments to the committee. He is blind. He couldn't get a copy of the proposal from the Attorney General around the amendments in a way that he could put them into the computer in a text or HTML format—I hope I'm getting that right—so that the computer could read them to him. Ms. Stokes, I've got to tell you, who is the clerk of the committee and the custodian of these materials that are documented, did what the Ministry of the Attorney General, with all its huge resources, couldn't. Ms. Stokes used her talents and skills to get Mr. Rae a copy of that submission in a way that he could read it, being blind.

I put to government members—and I want you to remember this occasion, because I want you to be the watchdog—that a select committee should be set up promptly to talk in a very fair way about access to government in alternative formats. I really believe that. That is something that is non-partisan. It's something that needs a little bit of exploration. People like Ms. Bongard are eager to assist, along with others. It's probably going to cost a little bit of money, but in view of—we've referred to the Eldridge decision of the Supreme Court of Canada. It would serve us well, as legislators, to set up a select committee. We've got a year left of this government, so we've got time to do that.

I don't want to deny you any opportunity to respond, Ms. Bongard.

1220

**Mr. Zimmer:** Just on that point, there is the committee the Chief Justice has set up that was dealing with this whole access of the disabled to the court system. That is a template.

**Mr. Kormos:** We can piggyback on that.

**Ms. Bongard:** May I make one last comment? This not only involves people with disabilities, but you mentioned computers. A lot of seniors don't know how to run a computer, but they still need material in an alternative format, specifically large print.

**Mr. Kormos:** Large print. You're right, and I appreciate your comments. I hope you have prompted something here today.

**Mrs. Van Bommel:** Thank you for your presentation. I certainly appreciate the distance you've come to make that.

In your earlier letter to the committee, you talked about the right to appeal a decision. I'll quote from it, just to refresh your own memory: "Under the current system, an individual has the right to appeal a decision if the tribunal rules against them. With Bill 107, it appears this would happen only if the tribunal ruling was blatantly unreasonable." But in previous presentations we heard from people who said that most often the people who appeal a decision are the respondents, people who have committed the so-called discrimination in the first place; they didn't like the commission's ruling so they go forward to appeal it again and draw those people who are the victim of the discrimination through the process one more time. How do you feel about that? I understand the need to appeal a decision, but how do we make sure it doesn't revictimize people over and over again?

**Ms. Bongard:** They will also be revictimized if they get so far in the process and it is dismissed behind closed doors. I really feel that the utmost for every claim needs to be taken and there needs to be good reason why a claim is dismissed.

**Mrs. Van Bommel:** Thank you.

**The Chair:** Thank you very much for making your presentation.

#### PARKDALE COMMUNITY LEGAL SERVICES

**The Chair:** The final presenters are from Parkdale Community Legal Services, Ms. Elisabeth Brückmann. Good afternoon, ma'am. You have 30 minutes. You may begin.

**Ms. Elisabeth Brückmann:** Good afternoon. Chair, I wonder if I could ask you to tell me when I'm halfway through. I'd appreciate that.

First of all, I should apologize. I did not hear all the presentations this morning, and generally I like to hear those so I can avoid being repetitive. I'll ask you to bear with me if I go over something that has been gone over before. Maybe I can add something different to it. But by and large, I think I am speaking to some issues that haven't been raised before that I can speak to as a legal clinic lawyer.

I'm one of the four staff lawyers at the Parkdale legal clinic. I practise employment and human rights law at Parkdale. Prior to that I was in private practice with Mary Cornish at Cavalluzzo Hayes Shilton McIntyre and Cornish. I also note that I am a person with a disability.

It may seem surprising to the committee that I'm here as a legal clinic lawyer practising human rights law at the largest and possibly the best-known clinic in the province and yet I don't support Bill 107. My colleague Cynthia Pay, who is here today, also a lawyer at Parkdale and past president of the Chinese Canadian National Council, also does not support Bill 107.

You were told last week—I was here for it—that 55 legal clinics support this alleged reform. You were given a copy of a letter that called on the government to move forward with the bill, signed by these 55 legal clinics. You heard from Kathy Laird from the Advocacy Centre for Tenants Ontario and representatives from two other clinics, who stated that they, the four of them, were in their presentation speaking for the clinic system. What you weren't told and what isn't mentioned in the letter is whether or not those 55 legal clinics actually have any experience with human rights law. I can tell you that the vast majority of those clinics do not practise in the field at all.

**Mr. Kormos:** One moment. My apologies for interrupting you. This is very surprising information. I loathe doing this, but Mr. Zimmer indicated he had to leave for a few minutes. I wasn't going to raise his absence; from time to time, any one of us needs to leave briefly. It is incredibly important that Mr. Zimmer hear this. He is the parliamentary assistant.

My apologies, Mr. Zimmer. You indicated that you had to leave for a few minutes. I understand that. But this participant has told us some incredibly surprising information that I really think is important for you to hear.

**Mr. Zimmer:** My apologies. I had to go to the washroom.

**Mr. Kormos:** I understand. My apologies for interrupting. I hope we'll indulge this participant, but it's important that Mr. Zimmer hear this. He's the conduit to the AG, to Mr. Bryant. Thank you kindly, Ms. Brückmann.

**Ms. Brückmann:** Sure. I actually don't recall when you left the room, Mr. Zimmer, so I'll just tell you very briefly that what I was saying is that I'm here as a legal aid clinic lawyer practising human rights law and I don't support Bill 107.

**Mr. Kormos:** Formerly with the law firm of—

**Ms. Brückmann:** —Cavalluzzo Hayes Shilton McIntyre and Cornish, where I worked substantially with Mary Cornish.

My colleague, Cynthia Pay, who's here today, is also a lawyer at the Parkdale legal clinic, which I noted is the largest and possibly the best-known clinic in the province, and is also a past president of the Chinese Canadian National Council, and she doesn't support Bill 107.

We were really quite surprised when we saw that 55 legal clinics had signed on to a letter urging the government to move forward with this supposed reform. We were dismayed when a number of our colleagues at other clinics—Kathy Laird from ACTO and a number of others from two other clinics—spoke and said they were speaking for the clinic system. I took a look at the list at the back of this letter. I realized that what was not noted is whether these clinics practise human rights law. I can tell you that the vast majority do not. It's not really surprising, because legal aid clinics in Ontario are extraordinarily underfunded. Clinics across the province lack the resources to assist people with human rights violations because they barely have the staff to help low-income people maintain housing or social assistance. There is just no staff time for human rights. That is particularly so when the current system provides mediation and investigation and, when matters go to the tribunal, the assistance of a prosecutor.

#### 1230

I took a look at the most recent statistics from Legal Aid Ontario. The clinic system is made up of 79 clinics. The latest statistics are from 2005, and the clinic system as a whole took just over 100 human rights cases in all of 2005—111, to be exact. It's not very many at all. Then I looked at the list of the clinics that signed the letter supporting Bill 107. I just started at the top of the list. The Algoma Community Legal Clinic reported no human rights cases in 2005. Brampton Community Legal Clinic reported no human rights cases in 2005. The Chatham-Kent Legal Clinic reported no human rights cases in 2005. The Clinique juridique francophone de l'Est d'Ottawa reported just one human rights case in 2005. The Clinique Juridique Grand-Nord reported no human

rights cases in 2005. I don't think it's necessary to plow through them all, and I certainly don't have time, but the statistics are available and can be reviewed. By and large, the legal clinic system does not have extraordinary expertise in the area of human rights law, yet you're being given the sense that there is enormous support for this bill from experts because 55 legal clinics put their names down.

What is also interesting about the list of clinics who support the alleged reform are those missing from the list. Aboriginal Legal Services is not on the list. The African Canadian Legal Clinic is not on the list. These are specialty clinics located in Toronto, each of which provides service across the province to particular communities. The Metro Toronto Chinese and Southeast Asian Legal Clinic is not on the list. Parkdale Community Legal Services is not on the list. Now, these clinics practise human rights law. I have about 10 cases ongoing right now and the clinics representing racialized communities probably have many more. So you need to take the statement that the clinic system supports Bill 107 with a very big grain of salt. The statement is misleading, as many statements in this debate have been. As I said, regrettably, owing to a lack of resources, the vast majority of legal aid clinics know very little about human rights law.

Along with this, the committee should be very wary of statements which suggest that, by hearing from clinics, you are hearing directly from the diverse communities they represent. We provide legal service to our communities, and as much as possible we try to advance concerns that these communities bring to us, but in no way should we deceive ourselves that we are the appointed spokespeople of our communities. The disabled community provides a classic example. ARCH, the legal clinic which focuses on issues affecting disabled people, is a Bill 107 supporter. Yet the majority of disabled people from this very diverse community who have spoken to this committee, either for themselves or from community groups, are very, very concerned about this bill. Those concerns are not reflected in ARCH's support. The fact is that if you want to know the position of the communities who need the protection of the Human Rights Code, you need to go to those communities directly.

**The Vice-Chair:** You have about 15 minutes left.

**Ms. Brückmann:** Thank you.

Sadly, as we know, that is not going to happen. The debate over this crucial piece of legislation, which speaks directly to people's need for equal accessibility, is now inaccessible. A piece of legislation founded on the premise that everyone should have a right to be heard is being rammed through without everyone being heard. The promises we received from the Attorney General that the consultation, notably missing from the beginning of the process, apart from one that was held 15 years ago—those promises that consultation would be held have been broken. I find it depressing and demoralizing and hypocritical. I am also, as a clinic lawyer, desperately worried, because this bill is profoundly flawed.

One of the things that has to be made clear is that, despite the divided opinion over Bill 107, nobody wants the status quo. There is no question that the current system is badly in need of reform. We've heard many horror stories from complainants and from their counsel and I can confirm that I have had similar bad experiences with the current system. But the unfortunate conclusion that people seem to be reaching, after telling you about their terrible experiences, is, "We must then go ahead with Bill 107." It's not a matter of choosing Bill 107 or no reform at all. There are many options for reform. If you had asked me at this time last year—regrettably, nobody did—what should be done to fix this system, I would have said two things: fund the system properly and amend section 36, the notorious gate-keeping function. No system can function without funds. Investigations can't proceed if there aren't enough investigators. It's not really much of a surprise that the current system isn't working. There isn't enough funding. Section 36 is too broad and allows a cash-strapped commission to weed out cases that are meritorious and that it might well not weed out if it had the funds to deal with them. Change section 36 and make sure that every meritorious case, where there is a possibility of success, is heard.

There you go: more funds and fix section 36. It's not that hard.

Now, there are obviously other things. You need more transparency in decision-making. You need more legal support. You need longer limitation periods. Reform is complex and it needs to be thought through. But fundamentally the system needs more funds and the gate-keeping system needs to be changed. So why are we building a brand new system? Why are we tearing down what we have now and building what appears to me to be the Aswan High Dam of human rights? It seems to me that it has a lot to do with these experts. A great deal of reliance has been placed on the information provided by experts, I note in large part behind closed doors.

**The Chair:** Excuse me. Can I just interrupt? I just want to keep everything consistent here. I had my Vice-Chair step in for me, and there is a bit of a discrepancy between my time and hers. I just want to keep the timing consistent. It's actually now that 15 minutes are up. I apologize for the—

**Ms. Brückmann:** No, I'm delighted.

**The Chair:** You may continue. I apologize for that.

**Ms. Brückmann:** Why are these experts being heard when community members are not? Does part of it have to do with the fact that they are overwhelmingly white lawyers, white lawyers perceived as rational, experienced and unbiased? Are members of racialized communities and disabled groups seen as unrealistic, irrational or even hysterical? From some of the responses I've received when I indicate that I do not support Bill 107, it seems to me that that is the message I am receiving.

1240

The technical briefing held last week into the summary of amendments that are apparently going to be proposed by the Attorney General was overwhelmingly attended by opponents of the bill. We were told again and

again—I kid you not—that smart people had provided the information that had resulted in Bill 107 and the proposed amendments. The suggestion was that the group in the room should defer to their greater wisdom. Unfortunately, the very same technical briefing confirmed our gravest fears over Bill 107. The new amendments appear to make no substantive difference in the bill. We did ask questions about those amendments, and the answers made it very clear that very few aspects of this reform have actually been thought through beyond the propaganda we have heard. It is hard to rely on the “smart people,” the experts, when no one at the Attorney General’s office can tell us how this reform is actually going to work.

Before I get to some of those practical concerns, I would like to highlight two of the more conceptual problems with the bill. These were noted by two of the speakers who preceded me. I heard Howard Shulman speak at length about this, so I’ll try to summarize. First of all, the notion that systemic and individual complaints can be separated from one another is completely unrealistic. I find it very, very hard to believe that there is an expert in human rights out there who would suggest otherwise. I have never presented an individual human rights case that did not have a systemic element, because all individual cases are located in a societal context and that societal context of discrimination is brought to our attention through those individual cases. To attempt to separate the individual from the systemic is to fundamentally miss the point of how discrimination works.

Let’s take one of my cases. A young, disabled man of color is attacked by the police. How can we consider this case outside the context of an entrenched culture of police violence against people of colour? How can we consider it outside the police culture of brutality towards people with disabilities? It is simply not possible. It’s worth noting that this case was thoroughly investigated by a commission investigator. The commission in fact allowed the complainant to accept a settlement so he could move on with his life, which is what he wanted. But he only did it with the understanding and the commitment from the commission that they would proceed to negotiate with the police force in question to ensure systemic change in the form of new policies and training. Neither the commission nor the tribunal as envisioned under Bill 107 could have achieved this. So the line between systemic and the individual cannot be drawn, and it is a fundamental flaw of this proposed system.

The second conceptual flaw is the shift that Bill 107 requires toward the privatization of human rights disputes. The current system, underfunded and flawed as it is, still conceives of each and every violation of human rights as being a harm to the crown or to society at large. There is a public prosecutor at the tribunal to represent that societal interest in maintaining a society free of discrimination. When I explain this to my students, I compare it to criminal law: The police investigate the crime and, where there is sufficient evidence, the matter is passed to crown counsel for prosecution. Crimes are suffered by victims, but they are also violations against

society. There is a deep public interest in maintaining a society free of crime, and a very similar system is currently in place for human rights. There is a slight difference, as noted by Mr. Shulman: In the human rights system the victim remains a party and can participate actively if they are able to do so. But if they cannot actively participate, the public prosecutor is there to proceed against the offender.

I am told that you were informed earlier in these hearings that, by and large, the prosecutors’ and the victims’ interests diverge. I have never experienced this. The human rights prosecutors I spoke to yesterday about this were absolutely incredulous. I have never seen a case where the human rights prosecutor did not advance the interests of the victim and where the victim did not feel that the prosecutor was advancing their cause. Under Bill 107, the role of the crown is lost. Each complaint loses its systemic context and it loses the societal support provided by the crown. The violations become just another private dispute between two parties; it’s a contract dispute or a personal injury. While this neat private dispute may be very attractive to lawyers who want to have their matter neatly bounded, it’s not what is wanted by the communities for whom maintaining basic human rights is an element of survival. They need to know that what they suffered is a harm that has been suffered by us all and that we all perceive ourselves as needing the crown to step forward to prosecute.

Conceptually, in two very major ways this bill troubles me. But there are also very real and very pressing practical concerns. For me, the most serious of these is the gaping hole that is the human rights support centre. This centre, we’ve been told, is the third pillar of a shiny new system, the pillar that will make direct access work. It’s the pillar that’s going to make our new, innovative system the envy of all. Every time a critic raises concerns about low-income people trying to navigate this new system alone, we are told, “Oh, there will be a human rights support centre and everyone will be supported.” It is the answer for everything to do with Bill 107. But what does a pillar look like? We tried to find out at this technical briefing. We don’t know, I don’t think any of you know, and at the technical briefing it became clear that the Attorney General’s staff don’t know. When pressed, they said, “It’s too soon to know.” We were actually told that we needed to stop thinking about worst-case scenarios and be more optimistic—you know, these are the smart people. When we pointed out that we weren’t optimistic to begin with and proceeded to ask further questions, we got the same answer. Is there a budget for the centre? They don’t know. Has a model been chosen? They don’t know. Would it look like a legal clinic? They don’t know. The Attorney General’s staff does not know, and I find that terrifying. You’re being asked to endorse a dramatically different model of human rights enforcement, one that failed in another province, based on “I don’t know.”

One thing they do know, though, is that not everyone will get representation—they were clear about that—and not everyone will get a lawyer. The support of a lawyer is

crucial. Human rights are very complicated; it's a complicated area of law. Mary Cornish is clear in her report that fully accessible legal representation is needed for direct access to work. She doesn't say "support"; she uses the term "advocacy." Complainants need advocates. Where are all these lawyers going to come from? It's not a common area of expertise. The salaries at legal aid are appalling. And even at those rates, it would cost millions to hire enough lawyers to provide full representation. With the number of complaints, it would take a clinic about 15 times the size of Parkdale, which is the largest clinic in the province. One person at the hearings last week said to me, "Maybe the complainants could have paralegals or even articling students." I don't understand how this can be an improvement over trained commission prosecutors. How does this make for a more equal or accessible system? The respondents will have lawyers.

Shoddy representation aside, we were told that full legal support does not mean representation. I asked, could it mean that someone gets a pamphlet at the door? What about direction to a website, or maybe a written guide to the system telling victims how they can call their own witnesses, how they can cross-examine their harassers and how they can formulate their own legal arguments? We were told that there will be a gradation of services. Some will get representation and some may get brief service, some may get some advice, and I think some people will get a pamphlet at the door. Who decides what level of support people get? The staff at the human rights support centre, I suppose. The 2,500 who initiate complaints—

**The Chair:** Ms. Brückmann, you have one remaining minute, so if you can just finish up.

**Ms. Brückmann:** Oh, I should wrap up.

Allow me just to jump to the end. There are other technical flaws I was going to point out, but I'm running out of time. The bill is a disaster waiting to happen. The bill will not make Ontario a leader in human rights. It's going to reproduce the embarrassment that the government in British Columbia faced.

But the political fallout is not my clinic's problem. My problem is going to be the low-income people who come to our door, when all this is said and done, and say, "I went to the commission and they sent me to the tribunal. I went to the tribunal and they sent me to the legal support centre. I went to the legal support centre and they said they couldn't take my case." Then I'm going to have to say to them that I can't take their case either because I'm stretched thin and I can't take any more. I'm going to have to tell them that the human rights protection that they thought they had under the Human Rights Code is meaningless. This isn't just a political disaster; it is a tragedy that robs the people of Ontario of any hope of a functional human rights system.

**The Chair:** Thank you for your participation.

**Mr. Kormos:** Chair, may we please request that the clerk assist us in expediting an instant Hansard, a draft Hansard, of the comments of the last presenter?

**The Chair:** Thank you very much. That concludes our meeting for today.

*The committee adjourned at 1254.*

## CONTENTS

Wednesday 22 November 2006

<b>Human Rights Code Amendment Act, 2006, Bill 107, <i>Mr. Bryant</i> / <b>Loi de 2006 modifiant le Code des droits de la personne, projet de loi 107, <i>M. Bryant</i></b> .....</b>	JP-931
Operation Black Vote Canada .....	JP-931
Ms. Delores Lawrence	
Ms. June Veacock	
Canadian Hearing Society, Toronto .....	JP-936
Mr. Gary Malkowski	
Ms. Susan Main	
Mr. Edward Ackad.....	JP-939
Centre for Equality Rights in Accommodation .....	JP-941
Mr. John Fraser	
Ms. Michelle Mulgrave	
519 Anti-Violence Program.....	JP-946
Mr. Howard Shulman	
Ms. Marie Bongard.....	JP-950
Parkdale Community Legal Services.....	JP-952
Ms. Elisabeth Brückmann	

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## **Legislative Assembly of Ontario**

Second Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 23 November 2006

# **Journal des débats (Hansard)**

Jeudi 23 novembre 2006

**Standing committee on  
justice policy**

Human Rights Code  
Amendment Act, 2006

**Comité permanent  
de la justice**

Loi de 2006 modifiant le Code  
des droits de la personne

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 23 November 2006

Jeudi 23 novembre 2006

*The committee met at 0933 in room 151.*HUMAN RIGHTS CODE  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE  
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

**The Vice-Chair (Mrs. Maria Van Bommel):** I'm going to call this to order. Welcome, everyone, to the standing committee on justice policy. We are hearing the public presentations on Bill 107, An Act to amend the Human Rights Code.

## SUBCOMMITTEE REPORT

**The Vice-Chair:** I believe we have a subcommittee report to present. Mr. Zimmer, please.

**Mr. David Zimmer (Willowdale):** Yes. The subcommittee met on Wednesday, November 22, 2006 at 12:30 with respect to matters relating to these proceedings and recommends the following to the full committee:

(1) That all advertising for Bill 107 be cancelled wherever possible and as soon as possible.

(2) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the unanimous report of the subcommittee.

**The Vice-Chair:** Thank you very much, Mr. Zimmer. Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** I am confident that the committee will sit to accommodate all of its presenters, notwithstanding that we're going to use up a couple of minutes of the committee's time this morning debating this subcommittee report. I want to make it very clear that as a member of that subcommittee representing the NDP, I of course endorsed the proposition; not that I wouldn't have relished those ads continuing to appear to demonstrate the government's breach of its commitment to people in the province of Ontario, but I wasn't going to do that at what was a distinct cost to taxpayers.

The government, in the course of defending its guillotine motion, its closure of these proceedings, has amongst its arguments stated, "Well, of course, the committee sat

for three days in Thunder Bay, London and Ottawa." Those of us on the committee will remember those days well, if only because of the interesting travel arrangements that were available to us, and it was the staff who suffered far more than we did.

The justice committee had before it several bills: Bill 14, the paralegal legislation, as it's colloquially called, although it dealt with other very important matters as well, and Bill 107. The justice committee can only deal with one thing at a time. Perhaps it's in the nature of politicians that they indeed can't chew gum and walk. The government had to make a choice—in fact, it was clearly Mr. Bryant's choice, as the Attorney General, because both of them were his bills—as to which bill was going to proceed first. Not irrationally, the government, Mr. Bryant, chose Bill 14. I say "not irrationally" because, while the opposition parties did not agree with what Bill 14 ended up becoming, it was necessary for the law society and community colleges, amongst other things, to have Bill 14 if they were going to start to structure and build the training programs, the educational programs designed to give paralegals the educational prerequisites to be licensed by the law society in this new regulatory regime.

We knew and the government knew that there was going to be significant interest in Bill 14, and we accommodated that interest, but for a few who unfortunately didn't submit their names prior to the cut-off point. But I have no doubt when I suggest that had they had their names submitted, they would have been accommodated. The opposition parties knew full well that there was significant support for Bill 14, just as there was significant opposition. It was, again, a very contentious bill. The opposition members were as eager to hear from advocates for the government's position as, of course, we were concerned about the government's position.

In subcommittee, Mr. Zimmer was there speaking on behalf of the government. And in House leaders, we expressed concerns about the rather bizarre request on the part of the government to have but three days of committee hearings in the beginning of August, when the government knew full well—because the opposition parties had made a commitment to the government that we would make best effort to deal with Bill 14 in time to get it reported back to the House after the House returned in September, so that third reading debate could take place and the vote on third reading could happen. And we did make best effort. While it took a couple of days longer

than we expected it to, six-page amendments that had to be read into the record, because that's what the rules are by the government, they didn't help expedite matters, did they, Mr. Zimmer?

0940

There had been agreement that, immediately upon the completion of Bill 14, we would begin working with Bill 107. Again, we knew, opposition members knew, that there was serious concern about the proposition. There was concern about the broader proposition—private versus public—as well as the minutiae of things like funding of legal advocacy for human rights complainants.

We also knew there was going to be considerable interest in the committee process. So do you see what happened? When we had the Thunder Bay-Ottawa-London—and opposition members said, “What are you doing? Why do that? We're going to have to do it all over again because you had to advertise across the province to accommodate those people who wanted to appear in those venues.” So that cost the taxpayer 100 grand-plus. The clerk worked very hard at arranging ads in ethnic newspapers, in small-circulation newspapers that were read by ethnic communities, by other communities who would have a natural interest in the legislation.

What do I know? I'm from small-town Ontario, but I suspect that the government thought it could strike a knockout blow in the first round by having—this government was very specific, wanting it in these three cities, no variation. We didn't have any input into what venues, what cities. Government wanted those three cities, come hell or high water. And as I say, I only suspect; I can't even begin to think of what goes on in the mind of Mr. Bryant. I'm not even sure I want to know what goes on in the mind of Mr. Bryant. It could be a scarring experience. But I suspect that the government thought it was going to score a knockout blow in the first round, if you don't mind that analogy. Well, it didn't. The hearings from the government's point of view and in terms of spin were pretty much a dismal failure. And the government knew that we still had to entertain a significant number of people here in the city of Toronto.

We had a subcommittee meeting at which the government agreed, because it was opposition members who said, “Let's get going,” which is how we got started last week, because we already had a list. We didn't have to advertise to get going because we already had people who had expressed interest. So the ads hadn't even appeared yet. We said, “Let's get going, because we don't have to wait for the ads to appear. Madam Clerk, go through that incredibly onerous exercise once again of preparing ads and having them translated,” because when you're publishing in the ethnic press, it's naive to publish it in anything other than the language of that ethnic newspaper or publication.

The government agreed, and in the House leaders' meeting there was agreement, and it was agreed that the cut-off time for requests to appear would be December 15, which is the day after the House rises for the winter break. The government knew, acknowledged, acquiesced,

and supported the proposition that there be public hearings throughout the months of January and February. The government in this committee supported unanimously the subcommittee report, with not a word of dissent, not a single word of caution. This committee unanimously supported the subcommittee report which authorized publication of advertising across the province with a December 15 deadline for submitting one's name, knowing full well the House rises on December 14. That's the calendar.

To somehow peculiarly suggest that, in some way, opposition members did something to force closure is an outright prevarication—that means “lie,” Madam Chair. I don't mind being lied to. I've been in the Legislature for 19 years, and one of the peculiar things about legislative rules is that it's against the rules to call somebody a liar, but it's not against the rules to lie, and people lie every day in the Legislature. It's a fact of life in politics in the year 2006—it is. The apologists refer to it as “spin.” Spin to the extent that it's mere puffery is merely spin. Spin when it goes beyond mere puffery is an outright lie. I don't mind being lied to. As I say, in 19 years here at Queen's Park, I am so used to it, Jesus, it just rolls off my back.

But, by God, Ontarians sure as hell object to being lied to. Voters, taxpayers, hard-working women and men and, more importantly, people who are victims of discrimination count upon their government to design and develop systems that permit them to tell their children that while they were victims of discrimination with respect to racism, with respect to gender, with respect to sexual orientation, their children won't be, because as Ontarians, as residents of this province, as taxpayers, they believed a government that said it was going to let them, the people who know best, participate in the most important part of the parliamentary process.

This is, my friends, I tell you, the single most important part of the parliamentary process. It's not first reading. There's no debate. You present a bill and almost inevitably it's supported. It's not second reading debate, because second reading debate quite frankly is not a debate that's designed to change the minds of other parliamentarians. It's designed to get the message out as to where a particular party, caucus or individual stands on a bill. It's not third reading, because by the time third reading happens, the deal is done. The fix is in.

It's public hearings. It's when folks, just plain folks, whether they're well educated or not, whether they've prepared fancy, expensive briefs that are bound with shiny covers or whether they've prepared handwritten single-pagers or, in the instance of this legislation, it's the people who have been victims of discrimination and the people out there on the ground, fighting and advocating for those victims.

0950

It's people like Elisabeth Brückmann from Parkdale Community Legal Services, who blew the whistle yesterday on the government's less-than-ethical gathering of so-called authorities who scorned, demeaned, denigrated and dismissed people who had concerns about this legis-

lation as a solution to acknowledged problems at the Ontario Human Rights Commission. And throughout these hearings there was a persistent slandering and defamation of the hard-working staff of that commission. Day after day, advocates of this legislation talked about the so-called horror stories. And while all of us have had concerns expressed in our constituency offices about unfortunate delays at the Human Rights Commission, problems from time to time with processing complaints, I'm increasingly convinced that some of the most dramatic tales being told here are myths. The government and its collaborators have made a concerted effort to generate a myth around the Human Rights Commission and its staff, a myth that quite frankly allows no other inference than widespread incompetence or outright corruption.

This ain't Telus Corp. It's not a huge corporate body with hundreds of staff; it's a pretty small group of people. You see, Chair, if there's incompetence or corruption by the front-line staff, there's incompetence and corruption by their managers and there's incompetence and corruption by the chairs of the commission. What a ridiculous, what an absurd allegation. It is beyond belief. It is incredulous. That's how this government has been marketing this legislation.

I understand the debate between the public advocacy and struggle against discrimination versus a private advocacy and struggle. As Ms. Brückmann and other observers noted yesterday, it's like the difference between the crown attorney prosecuting a crime in the public interest and the victim of a crime engaging in a lawsuit in a civil court where it's a matter of the victim as plaintiff versus the perpetrator as respondent in seeking damages. That's the fundamental conflict in views here. And that's okay; that's a sound debate. The government doesn't want to have it: "Oh, we've heard it all." Bull crap, because you wouldn't have heard it all if Ms. Brückmann from Parkdale Community Legal Services hadn't happened just to sneak in under the wire yesterday.

The government promised—you agreed—to let front-line workers from the commission come to this committee to respond to the concerns and complaints that have been raised about the performance of the commission. You supported that motion unanimously. But you had no intention of letting those people come before this committee to respond to some of the allegations made about them and their work. You agreed and we agreed that managers should be here, so that they could have a chance, an opportunity, to respond to indeed what have been some rather scurrilous allegations, not about the structure but about the actual performance of individuals, the allegation that people are being inappropriately triaged under section 36, the distinct allegation that Human Rights Commission staff are unduly denying people access to the process; ridiculous comments like those made yesterday suggesting that the majority of claims are denied at the intake process. Again, horse crap. It's 11%.

Go to any police station in this province and ask them how many complaints they get from citizens about purported crimes and ask them what percentage of those purported crimes don't amount to crimes, whether or not

they're sympathetic, such that the police have to tell that person, "No, this doesn't constitute a crime. We can't lay a charge. I'm sorry. It doesn't fit within the Criminal Code."

I'm going to support this subcommittee report today here in committee, but I do it with shame and regret, because we promised people something. We promised them committee hearings during the course of the winter months. We promised them access to this process. We've broken that promise. And in the context of human rights, a struggle against discrimination, this committee, by virtue of the government's closure, has discriminated against some of the most deserving Ontarians. I am ashamed of you. I have not had more regret in 19 years here than I do today. And when we start to see, by virtue of Ms. Brückmann's comments yesterday, some light being shed on some very unethical and inappropriate conduct on the part of this government in the manner in which it has mobilized its supporters in a most dishonest way around this legislation, I'm not afraid to say that the people of Ontario are ashamed as well.

I've got no further comments on this subcommittee report, Chair.

**Mrs. Christine Elliott (Whitby-Ajax):** I'd just like to comment briefly. There's a lot that I could say, but in the interests of respecting the time that we have left on this last day of hearings and for the people who have come to present today—and we do want to hear from you—I would just like to say that I wholeheartedly support Mr. Kormos's comments and to underline the fact that, as opposition members, we would have been more than happy to stay and sit in this committee until the last person wanted to make representations to this committee. Any suggestion that the opposition—particularly the PC Party and, I guess more particularly, I—made a suggestion that we wanted to suspend these committee meetings is absolutely not true. It was completely outrageous to have suggested that I would have said that.

What I wanted was to make sure that all of the pres-enters here knew what the Attorney General was speaking of when he brought in his so-called amendments, which to me were just mere statements of what his intentions were. It was only fair for the people who were coming here to make their representations that they would know what they were dealing with and the committee would know what they were dealing with. So I had only suggested that we should have that material before us before we continued, which in my mind was a very fair comment. However, I just think it needs to be known that we wanted this process to continue. We would have sat here and would have happily listened, because even as of yesterday, we heard three different perspectives that we would not have heard otherwise, and it's merely fortuitous that these people were able to present before us. So any suggestion that we've heard it all and we know enough to make a decision, I strongly disagree with.

Again, though I too will be supporting this subcommittee's report, it's only in the interests of saving taxpayers whatever money we can save, because obviously

the ads are going to be of no use at this point. It's only in the interest of saving money for the taxpayers that we are going to proceed to support this.

1000

**The Vice-Chair:** Any further debate? Hearing none, I'm going to put the question. All those in favour of the subcommittee report? Opposed? That carries. Thank you very much.

This is the last day of public hearings here in Toronto. To make these hearings as accessible as possible, American sign language interpretation and closed captioning services are being provided. To facilitate the quality of the sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I will interrupt if I feel that the interpreters are having some difficulty keeping the pace. As well, there are two support attendants present in the room to provide assistance to anyone who requires them. If you do require their assistance, please let the clerk know.

#### ONTARIO MARCH OF DIMES

**The Vice-Chair:** At this point our first witness today is the Ontario March of Dimes. Could they please come forward. Good morning. You have 30 minutes for your presentation. If you use up the entire 30 minutes, then the members of the standing committee will not have an opportunity to ask questions or make comments, but you are free to use it up in its entirety. So if you would, please state your names for the Hansard record and then proceed.

**Ms. Andria Spindel:** My name is Andria Spindel and I'm the president and CEO of March of Dimes. With me is—

**Mr. Warren Rupnarian:** Warren Rupnarian. I'm an advocacy consultant for the March of Dimes.

**The Vice-Chair:** Please go ahead.

**Ms. Spindel:** Thank you, Madam Chair, honourable members and fellow presenters.

We have consulted with dozens of groups and consumers, our own stakeholders, as part of the process of becoming as fully informed as possible about the total implications of Bill 107. As some of you might be aware, we hosted one such session on October 4 of this year to hear and learn from a variety of perspectives on how to improve Ontario's human rights system. We agree that the system needs to be improved.

Our mission at Ontario March of Dimes and March of Dimes Canada is to create a society fully inclusive of people with physical disabilities, so our mission is one of recognizing, protecting and advancing what we see as fundamental human rights: the right to secure meaningful employment, housing, health care; the right to access our public school system; the right to access buildings, public spaces, goods and services without barrier or discrimination; the right to participate in and contribute to Ontario's health, wealth and prosperity.

This bill proposes significant changes to the human rights system in Ontario. Prior to the Attorney General's

appearance before this committee last Wednesday, November 15, we were concerned about the lack of clarity and definition. We are pleased that most of the areas addressed by Minister Bryant improved or eliminated entire sections of the bill and we await receipt of the improved version for review.

Among the remaining concerns from our perspective are these two:

First, we need to ensure that this bill fully describes and provides for financial support for legal representation. The Attorney General's proposed amendment echoes this concern by eliminating the clause to charge user fees. We strongly encourage further clarity on the budgetary implications that arise from this recommendation.

Second, we want to see any proposed reform to the Ontario Human Rights Commission have the assurance of proper enforcement. We understand that the commission will have an enhanced role in educating people about human rights, and we applaud this. We understand that the legal support centre will provide further assistance to people bringing their concerns and complaints forward. We would like to see more definition about the centre and confirm that the commission will have the potency it needs to monitor and enforce human rights. We noticed on the government's website that the commission is empowered to enforce related legislation, the AODA—Accessibility for Ontarians with Disabilities Act—and we support this direction. This act will only be effective if compliance is assured and enforced.

On a further point, as the Attorney General's recent amendments to the bill were only presented before this committee one week ago, we strongly encourage further stakeholder consultation to allow feedback on the soon-to-be-revised bill.

I'd now like to thank you for the opportunity to present and turn to my colleague Warren Rupnarian to provide a bit of insight on Bill 107 from a consumer's perspective.

**Mr. Rupnarian:** Thank you very much. Just to give you an idea of where I'm coming from, I'd like to tell you all a story about navigation.

This morning, I came here as a result of a Wheel-Trans bus. I told the driver, "I need to be dropped off at Queen's Park." The driver dropped me off at the wrong building. Just to get to this room, I needed assistance navigating through the hallways and the different elevators, for as simple a thing as getting to a meeting. Can you imagine the barriers that would be encountered if I had a human rights complaint? I think that there can never be enough guidance for getting from point A to point B, in particular when someone has a special need. So there needs to be a simplification of the process.

Another issue is the funding aspect. How will those who need funding help access those resources, and who will be eligible?

In closing, I'd just like to say that I would strongly recommend that there be review and consultations on the new changes so that stakeholders can have their voices heard.

**The Vice-Chair:** Any further comments?

**Ms. Spindel:** We are happy to take any questions. Otherwise, I think you have a copy of our submission today.

**The Vice-Chair:** Thank you very much. That leaves about eight minutes for each of the sides. Mrs. Elliott, we'll start the rotation with you.

**Mrs. Elliott:** We share your concern with respect to the legal support centre. That was one of the reasons why we wanted to see the text of the amendments, so that we would know exactly what the Attorney General proposed. We heard from Ms. Brückmann yesterday—Mr. Kormos has referred to her testimony—and you may have appeared at the technical briefing that I understand was held with the Attorney General's staff following the statement by the Attorney General in this committee on November 15. They were told at that time that it hadn't been fully determined, but that for sure not everyone would be receiving legal representation from a lawyer. Yet the Attorney General has said twice in the Legislature that people will be represented by a lawyer. So I think you're right to be concerned about that. I think we all should be concerned about that if we look at the budgetary implications and how it's actually going to happen, because it sounds really good, but I share your concerns.

**Ms. Spindel:** I think that is the gist of what we're speaking of.

**Mr. Kormos:** Welcome back to Queen's Park. Yesterday, some comments prompted the observation—and I was pleased that Mr. Zimmer expressed a strong interest in the proposition of a select committee here at Queen's Park that would examine issues of access, both physical access to the building and, as importantly, if not more importantly, access to the material that's generated here. Unfortunately, discrimination by white, middle-aged, middle-income people is—I don't know—to us what the seal hunt is to Brigitte Bardot. It's true. It's that bleeding-heart liberal, "Oh my, discrimination is bad. Shame, shame. Nobody supports it." Yesterday—I believe it was yesterday; if not yesterday, it was certainly during the course of these committee hearings—reference was made to how politely Canadians discriminate. We're oh, so polite as we discriminate against people.

It is regrettable that it appears the commission's role as a prosecutor is going to be eliminated, because I've reached the point in my—I've been here through the struggles around disability legislation, and I acknowledge and recognize the support that the community of advocates for Ontarians with disabilities had for the most recent Ontarians with Disabilities Act. Of course, there was a strong connection between their support for that bill and the maintenance and strengthening of the Human Rights Commission.

1010

I believe more people should be bringing discrimination complaints against the Legislative Assembly, literally. Unfortunately, the Vaid decision I made reference to—and it's not resolved. Vaid, of course, is a federal

matter regarding the federal Human Rights Code, where the federal Parliament is claiming privilege in response to a claim of discrimination. Vaid was a driver for the Speaker of the House who alleges that he was discriminated against on his dismissal. The federal government has been fighting this tooth and nail—interim interlocutory matters—all the way to the Supreme Court of Canada, arguing privilege; that is to say, "We are not subject to the federal Human Rights Code." Pretty Goddamned outrageous.

So I'm concerned about complaints against the province of Ontario in the Legislative Assembly because I fear that the Legislative Assembly would similarly hire high-priced lawyers and use your money to argue privilege—and I'm not about to trivialize the relevance of privilege.

We have also been referred to the Eldridge decision. It was Gary Malkowski who brought that to our attention again. I'm not sure that the system proposed is going to facilitate it. I'm not sure that clinic lawyers, legal aid certificate lawyers, are going to be able to take on the province of Ontario and its deep, deep dockets—to wit, your pockets—that allow it to pay for huge legal teams.

Physical access to this building, access to written materials for blind people—for instance, Gary Malkowski was in the chamber the other day and, if not for Laurie Scott, a Conservative MPP who I didn't know knew sign language, but God bless her—if not for her efforts, Gary wouldn't have been able to hear anything that was going on.

Should a person have to call ahead and say, "I'm deaf, and I'll be at Queen's Park a week from now at exactly 3 p.m."? Should a person have to book ahead to be able to listen to the debate at Queen's Park? I don't think so.

**Mr. Rupnarian:** I don't think so either. That service should already be there without even asking.

**Mr. Kormos:** Exactly

**Mr. Zimmer:** I'm sorry; I didn't hear that.

**Mr. Rupnarian:** I said, I don't think so. That service should already be there without even asking. It's a human right.

**Mr. Kormos:** And it could be done as simply as having teletype up in the visitors' gallery, can't it?

**Mr. Rupnarian:** Sure.

**Mr. Kormos:** In large enough size—but for the fact that some people are both deaf and blind, and they have to communicate with tactile communication.

However much I wish that the Legislative Assembly would have its ass hauled before tribunals left and right on issues of discrimination, my fear is that the likelihood of that happening as a result of Bill 107 has diminished significantly.

It was the commission that went to bat for kids with autism. No single parent could have gotten together the incredibly expensive expert evidence—and again, the government fought tooth and nail—successive governments, okay? Let's be fair. They fought that litigation tooth and nail, but the parents won at the Human Rights Tribunal because the commission prosecuted, because the

commission acquired the expert evidence and because the commission spent the hours and hours that no legal aid certificate—look what legal aid is already proposing, Mr. Zimmer: putting a cap on certificates for criminal trials. Aren't they? Yesterday's newspaper: Legal aid is talking about putting a cap on criminal trials.

Mr. Bryant, yesterday, was obsessing with process: "Oh, we have too much process. We're too much process-focused." We heard that from Judge Moldaver the other day, too. That's right-wing talk for "Let's get rid of fairness." Too much process? Well, by God, I believe in process. I believe in process in the criminal system, because it's what makes sure that innocent people don't get convicted, although from time to time innocent people do get convicted, don't they? And I believe in process when it comes to the prosecution of human rights claims, because, by God, I don't want somebody who isn't guilty of discrimination to be found guilty of discrimination, but I don't want somebody who has discriminated to not be identified and stopped in their tracks.

I wish you folks well with the new legislation. I'm worried about it.

**The Chair (Mr. Vic Dhillon):** Thank you very much. Government side.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** I just want to say, thank you very much for coming in this morning. I certainly hope you'll be able to get home very easily. Thank you.

**Mr. Rupnarian:** Thank you very much.

**Ms. Spindel:** Mr. Chair, if I could just wrap up with saying that I think what we're looking for is further clarity and definition around the funding mechanism, around the enforcement, and to reiterate what Warren has said, a clear, defined navigational process for this particular legislation, but as he said, also for just general access. The situation this morning was one where he could not navigate around the building, with all good intent. There needs to be more consideration there.

I would like to ask one question, if I could: Will the revised bill with all of the amendments be available for consultation?

**Mr. Kormos:** It's a fair enough question. Perhaps the parliamentary assistant can answer that.

**Mr. Zimmer:** I will take that matter under advisement.

**Ms. Spindel:** Thank you for your time.

**Mr. Kormos:** It was a fair question; it wasn't a fair answer, Mr. Zimmer.

**The Chair:** Thank you very much for your presentation.

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Chair:** The next presenters are the Ontario Secondary School Teachers' Federation. Good morning.

**Ms. Rhonda Kimberley-Young:** Good morning. Thank you for the opportunity to present today. My name

is Rhonda Kimberley-Young and I'm president of the Ontario Secondary School Teachers' Federation. With me is Maurice Green of Green and Chercover, our legal counsel.

The Ontario Secondary School Teachers' Federation was founded—I apologize; I'm probably speaking too quickly—in 1919 and represents over 50,000 members in education across Ontario. They include public high school teachers, occasional teachers, educational assistants, continuing education teachers and instructors, psychologists, secretaries, speech and language pathologists, social workers, plant support personnel, attendance counsellors, university workers and many others in education.

The OSSTF has recognized the need for change in our human rights system in Ontario for over a decade, but this recognition should not be taken as *carte blanche* to make change for change's sake. Revitalizing and substantially overhauling the human rights system in Ontario is a task which requires the balancing of profound and important rights. It cannot be done without a view to the long-term viability of any changes we may make to the system. For this reason, while OSSTF welcomes the engagement and opportunity that Bill 107 represents, we do so with some caution.

OSSTF, along with its friends in labour, have long played a key role in the struggle for human rights in our society. We have a history of working with the broader community as well and have helped form awareness of the importance of human rights issues in our daily lives and, very importantly, in our schools.

#### 1020

When we first made submissions to this government in June of this year, we noted that, "Many groups and individuals share the view that our current system for human rights enforcement and the recognition of complaints needs reform. Delays in receiving a hearing by individuals and the absence of effective remedies are a sad fact of our present system. It is important, however, to approach a solution which does not abandon all aspects of this entity in Ontario."

We highlighted several points in our initial submissions which this government should address through the bill, and I will recap some of them here.

We need a well-resourced and focused commission, working in the best interests of the public in a proactive manner, tackling issues of systemic discrimination. We are pleased, then, to see today that the recently tabled amendments will clarify and expand the public interest role of the commission by giving it the power to bring its own applications to the tribunal whenever it's in the public interest to do so. We are also pleased to see that the amendments would give the commission a statutory right of intervention in any hearing in order to enforce the public interest that is integral to human rights. Further, the proposed amendments strengthen the commission's investigative and public interest powers as an essential component of its public interest mandate.

Second, we believe the government should clearly identify the resources available to a complainant and

guarantee that publicly funded representation be available to anyone presenting a complaint to the tribunal. The proposed amendments, as they've been described by this government, would entrench the existence of a human rights legal support centre to provide information, support, advice, assistance and legal representation. Any person who is, has been or may be an applicant seeking a remedy at the tribunal should be eligible for these services. The minister would fund the legal support centre and the services should be available where needed across the province. This is a substantial step forward to ensuring access to justice for the most vulnerable members of our communities.

Third, the tribunal must be properly resourced with skilled human rights adjudicators. The proposed amendments require all members of the tribunal to have human rights expertise.

Fourth, no legal fees or costs should be assessed against the complainants as this would have the consequence of limiting the ability of many to have a just hearing of their complaints. Bill 107 would remove the power of the tribunal to award costs against an unsuccessful complainant and the proposed amendments would eliminate the tribunal's power to charge fees.

Fifth, we believe that the bill should ensure that rules and regulations made by the tribunal are the subject of consultation with the public and the affected communities.

We were pleased to hear of tribunal chair Michael Gottheil's indication to this committee that public consultation on rules and procedures will be an integral part of the tribunal's work if the bill passes.

The bill, with these amendments, constitutes a bold move forward in bringing change to a tired system. The amended bill recognizes the continuing and revitalized role for a commission focused on the public interest, and a substantial and new role for the tribunal to provide access to justice for all Ontarians. But this is a unique opportunity in the 40-plus-year history of human rights in Ontario. We can and should make changes to the system that will carry us forward for years to come.

To this end, we renew our call on the government to further amend the bill to provide for the following: to ensure that the tribunal has the resources and flexibility to provide regional hearings. In a province as large as Ontario, sometimes access to justice means exactly that—simply being able to geographically access justice. When the tribunal is dealing with complaints from some of the most economically and socially vulnerable people in our communities, it's no answer to give them a hearing in Toronto if they are from Sioux Lookout or Kenora or Cochrane. We must ensure that geography does not become a barrier to equality and equity.

Second, expand the secretariats already provided for in the bill to add a secretariat for dealing with discrimination based on sex, sexual orientation and gender identification. Contrary to the opinions of some governments, women have not yet won all the battles for equality. There is a continuing need to ensure that progress made

is not rolled back and to address new situations. Furthermore, the areas of discrimination on the basis of sexual orientation and gender identity represent a new frontier for human rights and one that has yet to be fully explored in the research and jurisprudence. These are areas which require a secretariat.

Third, expand the commission's powers to give it a strong enforcement role by authorizing it to monitor and enforce remedies which the tribunal orders.

In conclusion, we would argue that the status quo is unacceptable. The changes proposed in Bill 107, with the proposed amendments and the additional amendments of which we have spoken today, present a viable alternative to a flawed system. Real, meaningful and timely human rights are essential if we are to create a strong, vibrant and diverse society in Ontario, but more importantly, they are a legacy to our children. The time has come to move forward with this legacy and pass a Bill 107 which is amended to address those concerns.

I thank you very much and I would also say, as one of the education unions/teacher federations in this province, we certainly would look forward to working with the commission to promote human rights to the next generation of Ontario citizens.

**The Chair:** Thank you very much. We have about seven minutes each.

**Mr. Kormos:** You omitted to mention Craig Brockwell.

**Ms. Kimberley-Young:** We have two other guests here from OSSTF: Domenic Bellissimo and Craig Brockwell from our provincial staff.

**Mr. Kormos:** And Craig has always been very effective and helpful to us here at Queen's Park.

I understand your perspective. The Cornish model, which isn't adopted in its entirety, but generally the theme of the Cornish model relies upon—the essential part of it is the assurance of legal representation for complainants. As I say, I read the pondering of putting a cap on Criminal Code, criminal defence legal aid certificates, and it sounds good to the people funding legal aid, but it doesn't sound so good if you're the guy or gal up there on a charge that could send you away for 25 years before you're eligible for parole, especially if you're innocent. And let's not try to pretend that we don't prosecute innocent people in this province, Mr. Zimmer.

So we're worried, because although we don't agree with the Cornish direct-access model, we do understand that if it's to work at all, it has to have this full funding. Unfortunately, we have no idea. The government has made no indication of where the money is going to come from, how it's going to be structured. Are you familiar with the Office of the Worker Advisor?

**Ms. Kimberley-Young:** I'm not, but I'll defer to my colleague who is.

**Mr. Kormos:** Maybe you have better luck with them than I do, but when I send constituents to them, there are waiting lists of a year and two years before their cases can get embarked on by the underfunded Office of the Worker Advisor. Am I way out to lunch on that?

**Mr. Maurice Green:** No, you're not. Unfortunately, it doesn't matter which government—and I've been practising since 1972. With great respect to all governments, they never fund these types of institutions properly, and it is extremely frustrating. And you wonder why, in the criminal sector, young lawyers don't go and do that—because they can't afford to or it just doesn't pay—and therefore you end up with people entering and doing that type of work who really don't have the expertise. That would be a worry of mine in terms of the human rights area as well. Surely people who have human rights discrimination cases are equally entitled to good counsel and experienced counsel. That means funding it properly.

**Mr. Kormos:** I'll tell you how I did it. When I practised criminal law as a socialist, I charged the paying customers enough so that I could do a fair amount of pro bono work. But I'm not sure how many socialist criminal defence lawyers there are in Ontario.

**Mr. Green:** Well, a lot of law firms do that, and we act for unions, as you well know. I think most of our clients know we also do a lot of pro bono work.

1030

**Mr. Kormos:** Are you a socialist?

**Mr. Green:** I have an English accent.

**Mr. Kormos:** Thank you very much for your participation. You know that you are third-to-last of people or organizations that are going to be allowed to make comment on this bill.

**The Chair:** Thank you, Mr. Kormos.

**Mr. Zimmer:** I want to thank OSSTF for its careful consideration and its support of the legislation, albeit with the caveats, and I've made a note of the caveats. Thank you for your careful consideration. I think Mr. McMeekin has some questions.

**Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I appreciate the specific recommendations, Rhonda, that you've made this morning. I think they are useful to us. There was a new one there that we caught about the secretariat around sexual orientation, which I think we need to look at.

I'm intrigued, though, because there has been some criticism with respect to the hearings. I note that we've had five days of hearings now, I believe, on this bill. We've heard from a lot of really good people. Hopefully, we'll get a chance to hear from a few more today.

You indicated that the OSSTF has had concerns about human rights for the last decade—

**Ms. Kimberley-Young:** Decades.

**Mr. McMeekin:** Decades, so I'm wondering, is this the first time you've appeared before a justice committee to talk about human rights legislation?

**Ms. Kimberley-Young:** No. I would hate to try to list pieces of legislation to which we may have made submissions, but there have been many pieces of legislation where we have certainly identified rights issues.

**Mr. McMeekin:** I'm thinking specifically of amendments to the human rights commission. Has that happened with any other government that you're aware of?

**Ms. Kimberley-Young:** We're unaware of a similar piece of legislation being debated.

**Mr. McMeekin:** That's what I thought. Was the social contract a human rights issue from the OSSTF's perspective?

**Mr. Kormos:** God bless Bob Rae.

**Mr. McMeekin:** Was it?

**Mr. Kormos:** Revealed as being one of yours.

**Ms. Kimberley-Young:** I was not a provincial representative at the time. Certainly I had my own view as a teacher at the time.

**Mr. McMeekin:** Just an—

*Interjection.*

**Mr. McMeekin:** I'd interrupt Mr. Kormos and his harangue. I just want to make the point that a previous government, on such a significant issue, one that caused me actually to leave the New Democratic Party and become a Liberal, I was so concerned about the abrogation of human rights—

**Mr. Kormos:** And now Bob—

**The Chair:** Mr. Kormos.

**Mr. McMeekin:** On the Liberal side—

**Mr. Kormos:** It hurts.

**Mr. McMeekin:** It hurts. I know we're touching a sensitive nerve here.

*Interjection.*

**The Chair:** Mr. Kormos.

**Mr. McMeekin:** Self-righteousness tends to come around to bite those who tend to practise it, admittedly most eloquently. But it was a human rights issue, clearly. The previous government had public hearings which they cancelled after the first day because the heat was so strong. I just wanted to make that observation.

I appreciate your coming out and doing the sharing that you have today. Like you, many of us on all sides of the House have legitimate and real concerns about human rights, and we're going to move this thing forward. I appreciate your coming out and your helpful suggestions. You've really modelled how to do this well. Thank you.

**Mr. Kormos:** If Bob Rae is the leader of the Liberal Party, I'll be campaigning in—

**Mr. McMeekin:** I know you don't have a good relationship with Mr. Rae. That's clear.

**Mr. Kormos:** Of course not; he's a Liberal.

**The Chair:** Mr. Kormos, order, please.

**Mrs. Elliott:** I would just like to ask a quick—

*Interjection.*

**Mrs. Elliott:** If I may, I'd like to ask the presenters a question. I'm interested if you can give me your views on some concerns that have been expressed by previous presenters about the separation of the investigation of complaints not being handled by the commission anymore and the idea that you can't separate systemic issues from individual issues and it will be more of an individualization—some people say privatization; I think of it more as an individualization—of matters before the tribunal, that there isn't a mechanism for the commission really to get hooked into those systemic issues under the

new system. If you could give me your views on that, I'd appreciate it.

**Ms. Kimberley-Young:** I'd be happy to, and I will defer some of those comments to my colleague, Maurice Green. But in terms of the amendments we've seen and some of the amendments we're proposing, access is a key issue that we are very concerned about: access to the supports, the resources, counsel and so on for any individual, as well as the geographical barriers and things that we identified here today. I will defer to my colleague to address more specifically the difference between the tribunal and commission roles.

**Mr. Green:** I agree that obviously underlying pretty well every act of discrimination is a systemic aspect, but you can't delay every single complainant's action to deal with it in a systemic way. You've got to deal with the person who's discriminating against you in a very real, quick way. It doesn't do much for a employee, when they're about to be fired or are being harangued and bullied and discriminated against, to say, "We have to have a broad-ranging inquiry into that employer." They come to a lawyer or to whoever they can for assistance and say, "How do we deal with this quickly and not have my life one hell because I'm being discriminated against?"

So you need to separate, and one of the big problems we face, whether we're defending people in front of the Human Rights Commission or are acting for them, whether it's pro bono or for paying clients, is the interminable delay in investigating. That's not to put any blame on individual people or the commission. They've hired generally fabulous people. They just have too heavy a caseload. It comes back—I hate to say it—to funding. If you don't fund the organization properly, how can they do the work? If you don't have enough police folks on the streets, how are you going to police?

**Mrs. Elliott:** I guess the concern is how the commission will gather the statistics to understand the trends in systemic discrimination if there isn't a mechanism to directly hook them into what's going on at the tribunal. That's the concern that has been expressed to us.

**Mr. Green:** It seems to me that under the amendments there is that clear ability. The commission is entitled to intervene in any matter, which is quite proper, and to take on the broader issues when it deems it appropriate. Legally, the basis is there to do it; hopefully, they will. Like every change to the system, it always looks good on paper. The question is, is it going to be carried out in practice?

**Mrs. Elliott:** That's exactly it: a more practical connection. Thank you.

**The Chair:** Thank you, folks.

**Mr. Kormos:** McMeekin, unlike you, you gutless wonder, I voted against that—

*Interjections.*

**The Chair:** Order, Mr. Kormos. Order.

**Mr. McMeekin:** We've touched a sensitive nerve.

**The Chair:** Order.

**Mr. Kormos:** "And I would have voted against it had I been there." You gutless wonder.

*Interjection.*

**Mr. Kormos:** I had the courage to vote against my government when it was wrong. You're a trained seal.

**Mr. McMeekin:** You're blaming your father again.

**Mr. Kormos:** You're a trained seal. You want to talk a big game. You go around whispering to opposition members, "Oh, if I had been there, I would have voted against the time allocation motion."

**Mr. McMeekin:** It's just all Bob Rae's fault; all Bob Rae's fault.

**Mr. Kormos:** You're a gutless wonder. You're a friggin' embarrassment to you, your party, and to your constituents. "Oh, gee, if I had been there, I would have voted against it." Oh, yeah. That's tough.

**Mr. McMeekin:** We've touched a sensitive nerve, Mr. Chair.

**The Chair:** Mr. Kormos, our next presenter is on the line, so I'd appreciate your co-operation. I don't think this is necessary or productive, so I would advise you to please remain in order.

#### RESEARCH AND DEVELOPMENT INTERNATIONAL INC.

**The Chair:** The next presenter is Angela Browne, and I believe she's on the phone. Hello, Angela.

**Ms. Angela Browne:** Hello. How are you doing?

**The Chair:** Good. This is Vic Dhillon. I'm the Chair of this committee. Welcome. Good morning. You're with an organization, so you have half an hour. You may begin.

**Ms. Browne:** My name is Angela Browne. I have a company where I work with people with disabilities. I live in the Niagara region, but my work involves issues affecting the whole province. I also represent individuals and organizations before the various tribunals, Small Claims Court etc. throughout Ontario. I also provide consulting services to various interest groups and associations about how proposed or actual legislation may impact on their work.

For example, I did a lot of work with a lot of people who were putting together their presentations for today. Most of the people I worked with were neither pro nor con this legislation. They each had something important to say, which is why I'm a little disappointed that everything was invoked by closure, because I think that a lot of what they had to say was very important. They're very different, a lot of them, and they offer very different perspectives.

1040

My specialty areas are human rights, social policy, employment/labour law and disability issues. I am presently writing a book on the ethics of disability advocacy, as well as in the process of publishing a number of articles on related issues in a number of online and off-line publications.

I cited my consulting company as the presenter this morning because of my 20-year history of working with a variety of disability organizations and representing persons with disabilities before various bodies. At present, there are several cases before the commission that I'm working on regarding various clients' interests. Over a third of the clients I have right now have disabilities, and I feel that I can speak with confidence on their perspective on a number of issues pertaining to Bill 107.

When this bill was first announced, I had serious concerns about how it was going to be implemented. One of my questions was and continues to be whether this bill is going to be another gift to lawyers. First of all, I feel that Bill 14, which you're all familiar with, was a big gift to lawyers. Unfortunately, it passed, but I really feel that there could have been a lot more amendments that could have been satisfactory to the various communities that appeared before the committee on that issue. As somebody who is not a lawyer but who has successfully worked on human rights cases for over the last 20 years, I hope that I can continue to work with claimants at all levels of their involvement with the commission and the newly revamped tribunal. I have concerns regarding the legal support centre. I want some guarantees that I can do this work and that this work will continue to be done.

My second question rests with systemic issues and how they impact on an individual level. As a person with a disability, despite my high level of education, work with senior management and consultative capacities in the past, I'm not optimistic about job opportunities in the future for persons with disabilities. The code's requirements are not enforced in the recruitment, selection, hiring and promotion policies of many employers that may otherwise offer a good salary. Policies that may not have discriminatory intent but do screen people with disabilities out of well-paid employment is the norm where I come from. As I am getting on in age, as many of my peers are, we do not have 20 years to see things change. Mortgages and families need to be paid for today, as well as 20 years from now. Because of my concerns in the systemic area, I'm pleased to see some amendments being made to empower the commission to do more systemic work, albeit with some concerns, which I'll outline later.

Finally, I have some concerns regarding funding. Funding for people with disabilities always seems to be among the first things that are cut when budgets are reviewed. For example, people living on Ontario disability support benefits need a strong advocate to put their concerns forward to appropriate government bodies. I have been doing that sort of thing over the past few years, much of it at no pay. However, I continue to be disappointed with the response of the government, which continues to force people with disabilities to live substantially below the poverty line and choose between decent housing or food on the table. People on ODSP, as you know, are now forced by stealth to engage in workfare-type activities. While the legislation does not force them to work, many of them find they must in order

to bring the amount of money they have up to a level where they can survive, regardless of whether the person can work or not or find an appropriate job that will accommodate their needs. Because of these concerns, I have similar concerns that the commission, tribunal and legal support centre will not be given the resources they need to carry out the work they will now be empowered to do.

Amendments: I'm pleased the Attorney General is open to putting out some amendments to this bill, particularly around some of the most contentious issues that have been hotly disputed, part of the growing concern about the new human rights process. This is very important, as the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario are of utmost importance to upholding and enforcing the rights to which a substantial number of my clients, as well as myself, are entitled to before and under the laws of this province. I hope the Attorney General will propose further amendments which reflect the concerns of the disability and low-income communities, members of which are the most likely to require the intervention of human rights legislation now and in the future. However, as I have not been able to secure the language of these amendments, I can only re-emphasize many of these concerns and urge the Attorney General to ensure that the language is consistent with the true intent of the proposed amendments and will not be another way to privatize or decrease access to the primary vehicle of human rights enforcement in this province.

First I want to talk about the Human Rights Commission.

(a) Systemic discrimination: The bill appears to put a stronger focus on the systemic issues. Over the years, in my view, not enough systemic issues have been investigated and brought to the tribunal. According to the bill and its amendments, it is assigning the commission to focus on systemic issues, as well as to educate and promote human rights in Ontario. The commission should be able to make its own applications to the tribunal as a party to any application, as it deems fit. This should include investigation and warrant powers in its review of systemic issues. This gives the commission a specialized role before the tribunal when it is, for example, impractical for hundreds of people to lay similar complaints to the same respondent or similar respondents. A good example of a systemic issue is transportation access, as this impacts on many different potential complainants. The commission should be able to investigate, conduct its own research, consult experts and use this information to prosecute respondents at the tribunal level.

The commission should also have the power to intervene at the tribunal in the hearing of another matter. For example, if I am presenting a case before the tribunal about transportation access issues impacting a client of mine, the commission should be able to intervene and bring a systemic perspective to the tribunal, as well as make recommendations that would be in the public interest and enforce it, as well as any other remedy that the

tribunal may otherwise award my client. The commission should also have the authority to accept submissions from organizations or individuals for consideration with respect to what systemic issues it will take on, in addition to having its own authority to find and litigate such issues.

If a systemic case is considered, the commission should be able to publish its intent on its website and other media that would potentially attract interested parties to provide input and expertise into the process, e.g., cases, research, statistics, expert testimony, etc. In complex cases, organizations should be able to access funds to provide this expertise and research to the commission, and subsequently the tribunal, to enable such issues to be heard in their proper forum.

In order to properly act in this role, the commission would receive notice of all applications to the tribunal, have access to any of the documents filed in the applications, as well as having a right to intervene. If the case is by a private individual or organization, the commission would seek that party's consent for its intervention. Investigation powers should be maintained and be enforceable at the level of provincial offences court, for example, before justices of peace, if the other side isn't complying. And the power could also be vested in the tribunal for all parties, including the commission.

In addition to the right to file systemic complaints and intervene in existing applications, the commission should also have a budget to conduct research and policy papers based on rulings by the tribunal and the courts. These papers would serve as guidelines in further development of cases, both on an individual and systemic basis.

(b) Commissioners: All commissioners should be appointed on the basis of merit with respect to their personal knowledge and expertise with respect to human rights issues. These appointments should not be limited to lawyers, although lawyers with a specific expertise in human rights policies should also be considered. It is best to develop a broad base of interests and experience around that table. As the majority of complaints appear to be from people with disabilities, at least half of the commissioners should have specific expertise in the area of disability issues and how they interact with human rights. If it is possible, persons with disabilities who also have this expertise should be considered. Other areas such as ethnicity, religion and gender should also be included as well, as cases involving these other issues require some expertise too.

(c) Advisory committees: The bill intended the commission to be authorized to appoint advisory committees on particular issues. Advisory committees would be helpful in the commission's research and investigative functions. For example, if the commission were examining practices engaged towards persons on social assistance that may potentially be covered by the code, a group of persons that would include people in receipt of assistance, legal clinic staff with expertise in a particular area, as well as community group representatives would have an interest in consulting on these issues, to review such

practices. Members of the advisory committees would be chosen by advertisement on its website, through community groups, government offices etc., and appointees would be given an honorarium and expenses for their time. There must be an effort to be geographically representative and diverse in terms of interests to ensure that good input is given.

(d) Accountability: I like the idea that the commission will now be directly accountable to the Legislature as opposed to a particular ministry. I appreciate that amendment being made because I feel that will improve some of the aspects of the legislation and perhaps make it less political, as it could potentially become.

#### 1050

Human Rights Tribunal: Bill 107 provides for direct access to the Human Rights Tribunal for any individual or other complainant. The idea for this direct access is supposed to help clear backlogs of commission-mandated reviews of complaints that can take up to five years if the issue is going to be referred. However, my concern here is that it's simplistic to believe that opening direct access to the tribunal is automatically going to clear up the backlog. It is said that there are over 2,500 new complaints in the system each year, and with these amendments, these numbers are likely to grow. For certain, if direct access is the way to go, if that's the way the government wants to do it—I'm not sure it's always the only way to go—staffing of the tribunal must ensure that it is capable of efficiently dealing with this significant caseload and possibly an increased caseload as time goes on and people become more aware of their rights.

One key issue that is currently clogging up the commission is understaffing and under-resourcing. For one complaint I had, it took until its fourth year in the system to even have it appointed to an investigator. After this investigator was seized of the matter, he was then moved to another part of the commission, and it took another three months to find a new investigator, who was fortunate enough to quickly take the matter to conciliation. We were fortunate as well that the respondent party at that point was interested in settling. This particular complaint was filed in the spring of 2002. It was finally settled at the conciliation meeting before the new investigator in November 2005 and finalized by the commission in 2006. For another complaint I filed in November 2005, it was quickly referred to mediation, where an all-day meeting settled it in February 2006. If we were not able to settle the matter that day, I'm sure our client would have had to jump through hoops for at least another two to three years or more, despite the fact that we had an excellent *prima facie* case that would work before the tribunal under direct access.

I have other matters still in the system; for example, two filed in March and another in June this year, as well as two others recently. It took the commission almost four months to mail us the reply by the respondent for one of my March complaints, even though the respondent did reply within the prescribed deadline. When I asked what was going on, they told me there was not enough

staff to handle the caseload. They apologized immediately and e-mailed somebody who then mailed me a copy of the respondent's reply. I believe that if they had enough resources, we would not be having these situations. I believe that they would have been able to quickly do their job and do things. But I'm telling you, this same scenario could easily be played out in the tribunal if it is not well staffed and resourced to handle direct access. I am emphasizing this because once the new system is in place and promotes new direct access, many more people will be bringing their complaints forward.

A substantial amount of transitional funding must be considered as well, as many complaints are now being processed through the commission's current system. If they're going to be brought to the tribunal at some stage, there needs to be a way of assessing where each complaint is and who is responsible for the carriage of the file. Perhaps transitional funding to allow the commission to process the complaints more quickly would be favourable, while new complaints would be filed after a certain date to start with the new system. As older complaints are dealt with through the commission and leave the system, are settled or get referred to the tribunal, no additional complaints could be started at the commission level. And as each complaint makes it through all the hoops under the transitional funding, resources devoted to these complaints could then be shifted over to the tribunal to capture the new complaints.

A maximum time period should be set in legislation or regulations with respect to each stage of processing the complaint. For example, a complaint is received and reviewed; it should be served in no more than 14 days. A reply to a complaint should be submitted within 30 days. A rebuttal should be made within 20 days etc., with some flexibility to accommodate individual needs. The tribunal should be geared to deal with each complaint from the date it is filed until the final hearing at the tribunal within 12 to 18 months maximum. For priority cases, the time frame should be much shorter.

While I realize the tribunal will likely conduct its own consultation with interested parties following the passage of this legislation, I have some other comments to make about the role of the tribunal.

(a) Rules of practice of the tribunal: If this legislation is passed, work will need to be done with regard to practice directions. Consultation with representatives and others with an interest in working at the tribunal should take place immediately to ensure that a number of matters are attended to, such as self-drafted complaints. People should not always have to worry about submitting things in the proper form or having their complaints dismissed because it is not in the proper format. There should be some guidelines to indicate what should be in the form and what should be in the complaints, so that when people self-draft, they would make sure they include it, and not be thrown out just because somebody missed one dotting of an i or crossing of a t. Many practitioners, even complainants themselves, prefer to draft

their own complaints on their computers, as it is easier for them. Also, there should be forms to download for those who like forms to be downloaded. So there should be some flexibility.

I notice that time frames have been extended from six months to one year following the most recent act of alleged discrimination or harassment. I thank the Attorney General for considering this extension. However, there are sometimes cases where an extension of even that time limit is required. The commission often exercised its discretion in certain cases to permit a complaint to be filed past the six-month time limit, but this discretion should be issued in guidelines under practice directions. There should be an application to extend time frames if the party needs more time. For example, there's a process in the Criminal Injuries Compensation Board for this.

Mediation should be voluntary and also be included in the rules of practice. In the current situation, many complainants are intimidated or frustrated into taking inadequate settlements because they know that if they do not accept the settlement, they'll be in for a four- or five-year fight. In other situations, mediation may not be possible between a complainant and respondent due to the severity of the issues involved.

In the Ontario Rental Housing Tribunal, there are trained mediators who attend each hearing block and avail themselves to parties who may also wish to settle the matter by mediation. The tribunal may choose to retain expert mediators to serve this purpose. Many current commission staff have this expertise and should be re-employed in the role at this tribunal.

With respect to any voluntary mediation, the date for mediation should be set separate and apart from the date of the hearing, unlike with the Ontario Rental Housing Tribunal, because otherwise it gets backlogged and disorganized, and there could be problems with confidentiality.

Dismissals of a complaint should only be contemplated for good reason; for example, the commission has clauses 34.1(a), (b) and (c), as well as section 36, as a tool to discard a complaint that may be out of jurisdiction, frivolous, vexatious etc. If there are plans to empower the tribunal to dismiss complaints, the complainant must have written notice with specific reasons as to why the tribunal wants to consider this action. If the complainant disagrees with this action, he or she must be given an opportunity to have a hearing on the matter. The reasons for dismissals as drafted in the legislation should be clear and not open-ended.

Hearings and other procedures before the tribunal should be set up to accommodate persons with disabilities and certain other issues, such as if their first language is not English or French. The Social Benefits Tribunal has developed a policy of accommodation for appellants before their body; similar rules should apply to the tribunal as well. As the person starts to fill out their complaint, their accommodation needs have to be identified and provided as necessary. The proposed legal

support centre should have the resources as well as the authority to bring in language interpreters, including ASL, as required to ensure that access is provided right from the beginning.

**Priority status:** There should be guidelines for people who want to have their complaints heard in priority. If the complaint is heard too late when something needs to be heard immediately or dealt with immediately because sometimes a person is in danger of eviction or of losing their job, there should be some guidelines about how a person could ask for priority status.

Appeals from the commission and the tribunal are important. There should be some access-to-appeal routes. For example, WSIB has appeals strictly on the question of law, and some tribunals have it if the appeal and the decision were patently unreasonable. Those two reasons should be reasons for appeal. If the tribunal makes a decision that a person is not happy with, then those are the two reasons that can be brought to an appellate court.

Tribunal members should be knowledgeable and experienced in human rights. Again, some should specialize in commonly filed issues such as disability-related cases. Further, some appointees could be lawyers; others don't necessarily have to be. Those appointed to the tribunal must have at least a university degree and some proven experience or expertise in human rights.

The tribunal members should be trained. There should be an extensive training period for each tribunal member because of the sensitivity of the issues they're dealing with. Justices of the peace receive extensive training in their roles. I don't see any reason why tribunal members of the Human Rights Tribunal shouldn't also need this training.

The tribunal adjudicators should also be independent. They should be appointed for fixed terms to avoid political influence. They should have the confidence that they have independence with regard to the decisions they make, free of external influences. Some adjudicators can be part-time, others full-time. Each should have the resources of the tribunal at their disposal. Some can specialize, for example, in certain kinds of cases—employment, disability, transportation etc.—or they can have more than one specialty.

**1100**

**Issues regarding the legal support centre:** In recent amendments, it was promised that a legal support centre would be included to ensure that complainants have the legal support and advice they need right from the start to file their complaints, all the way through to representation at the tribunal. I am pleased that the Attorney General is at least thinking about this issue, as removing this function from the commission would naturally necessitate another source of legal support for complainants, most of whom do not have the resources to pay for their own legal counsel. The authority of investigation and enforcing warrants must also be available to legal representatives working on any case. The tribunal should be able to order disclosure or access, for example, if a respondent is not co-operative. Resources should also be

available for the purposes of securing expert witnesses, medical documents or other evidence that would support a complaint at the tribunal or pre-hearing level.

However, my concerns about the legal centre would be as follows:

(a) **Funding:** How much funding will it receive? Has the Attorney General's office considered how much money it will cost to employ the number of lawyers and paralegals it will require to support the legal support centres to function, especially if you're going to be providing legal counsel to all comers, regardless of income or representation from trade unions? Particularly, the legal support centre can only be effective if it has the resources it needs in order to do this job.

(b) **Structure:** With an average of 2,500 complaints coming in per year, plus many more with direct access, how much staff will realistically be required to carry out this program? If it is under-resourced, potential bottlenecks will be created at the start of the process, when many people may have to wait until a legal representative is free to serve them, something not uncommon at legal clinics.

(c) **Non-lawyers:** They should be able to continue to represent complainants or respondents before the tribunal, provided they have experience and understand their role at this forum. I'm very concerned about comments made by members of organizations like the Ontario Bar Association and others who may want to restrict this representation to only lawyers. Non-lawyers and lawyers can be employed by the legal support centre. Both types of professionals must have training and familiarity with human rights law and be willing to be trained in the practice rules for the tribunal in order to practise before the tribunal. The tribunal will be depriving the public of years of substantial knowledge and input with respect to human rights expertise by individuals who have already been involved with the system for years, but who are not lawyers. Further, inclusion of non-lawyers will be a cost-effective way of maximizing value for dollar for legal services provided to users of the legal support centre.

(d) **Geographic representation and access:** This is an issue for which many people will need assistance. We need regional offices so that there are legal support workers in Niagara region, Owen Sound, Barrie and Toronto, just so that people could be able to walk in, telephone, fax or TTY access for someone in the same region. Talking to someone on the phone is not the same as meeting somebody in person and being able to start right at the complaint issue.

I suspect that there probably would be at least three legal representatives or consultants plus one administrative assistant per legal support office. The role of all legal staff would not just be preparing for hearings, but would be assisting people in drafting complaints, answering questions, properly serving respondents, following up with respondents etc., as well as assisting a person through the complaint process, up to the tribunal if necessary. That could be set up like the workers' advocacy centre for the WSIB or it could be set up where the gov-

ernment contracts with private parties in different regions to provide services. I provide services to people already; I already have an accessible office. People can come to my office and something like that could be contracted to, as well as other firms in my region. That would be cost-effective as well for the ministry because you're just paying people to do things per service.

Another way is setting up a central legal support centre with authorized providers at the local level that would liaise with the centre and accept clients as demand is made of the program. This is similar to the rights adviser program under the Psychiatric Patient Advocate Office. Providers bill the program at set rates as they do work and follow through with their clients all the way to the tribunal, if necessary. The central office will be responsible for training, provider support and administration of the program.

In any case, however the legal support centre is set up, people should also have the option of hiring their own representative if they should so choose, or use the centre's resources, depending on personal preference.

In summary, the key to making this proposal a success would be to: (a) ensure that transitional funding is available to the commission and tribunal to move through existing complaints in the system; (b) develop transitional directives to ensure that existing and new complaints are dealt with from the correct forum and all files are properly reviewed to ensure that the correct party has carriage of the matter; (c) empower the commission to initiate, intervene or accept submissions from third parties on systemic issues to litigate through the system, and fully resource the commission to do so, including soliciting full input of respective communities and expert panels; (d) ensure the tribunal is appropriately resourced to take on its new role and to handle the substantial numbers of complaints that are likely to remain in the system or join the system after this bill is proclaimed; (e) ensure that both commissioners and tribunal members are well qualified, with particular expertise in human rights issues, as well as having several commissioners with expertise and experience with disability matters; (f) non-lawyers as well as lawyers should be considered for both positions; (g) the legal support centre should be fully resourced, accessible and geographically located throughout the province to enable community-based legal support and representation in this specialized area; (h) non-lawyers with experience in the human rights area should also continue to be allowed to represent complainants or respondents at the tribunal level, as well as be employed by the centre; and (i) individuals and organizations should continue to have a choice to seek representation through the centre or to hire their own lawyer or paralegal.

But, most importantly, if the three pillars of this new system are not properly funded and supported, direct access will not be a reality and similar problems we're currently experiencing at the commission will be simply passed to the tribunal.

Thank you for allowing me to speak today.

**The Chair:** Thank you very much. We have about a minute for each party. Mr. Zimmer.

**Mr. Zimmer:** Thank you, Ms. Browne. I just want to make one point here. On page 10 of your submission, talking about qualification of tribunal members—

**Ms. Browne:** Yes.

**Mr. Zimmer:** Those appointed to the tribunal must—must—have a university degree. I'm surprised to see that in your submission, and I've got to express my concern about that.

I don't know what is so magical about having a university degree that qualifies, or the absence of one that would disqualify, someone for a position like this. I think the important thing is that they have a sensitivity and understanding of human rights.

I, for one, come from a family of several siblings. I was, because of circumstances, fortunate enough to get a university degree, and my life took a turn. I have siblings who went in another direction. That's just the force of circumstances. Under your proposal, notwithstanding their understanding of and commitment to human rights, they'd be barred from the tribunal. There are legislators who have and have not university degrees. I have to say I find it strange coming from an advocate of human rights, as you are, that you would include that artificial barrier to participation in the tribunal. I just wanted to note that for the record.

**Ms. Browne:** Well, I have several university degrees, and I haven't been able to get work. However, I can understand your point. It's taken.

**The Chair:** Thank you very much. Ms. Elliott.

**Mrs. Elliott:** Thank you, Ms. Browne, for your very comprehensive and thoughtful presentation. There's one thing that I would just like to point out. You noted that one of the amendments suggested that the commission would now be accountable to the Legislature. In fact, it doesn't actually say that, but I think it should. Certainly that would be something that we would propose as an amendment, that it should be accountable to the Legislature in the same way that the Ombudsman is.

Secondly, I share your concern with respect to the third pillar being the fully funded human legal support centre. Although I do have a concern about how it will be funded, what form it's going to take and how it's going to operate, I share the concerns that you do. So thank you very much for highlighting that.

**Ms. Browne:** Definitely. When you don't give a specific number or a specific staffing level, I'm always concerned that this is going to be turning out to be the same problem that we currently have.

**Mrs. Elliott:** I agree. Thank you.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Howdy, Ms. Browne.

**Ms. Browne:** Hi.

**Mr. Kormos:** I'm inclined to agree with Mr. Zimmer. The vast majority of members of the Legislature have university degrees, and I don't know; I'm not sure it has necessarily enhanced the quality of decision-making here at Queen's Park.

Look, I just want to thank you very much. You've always prepared extensive and well-researched material in the context of submissions you've made to any number of legislative endeavours here. I am sorely disappointed that the government appears hell-bent on adopting the so-called direct-access model; I don't think it's the way to go. But having interpreted their closure motion as a strong signal in that regard, you've made some valuable comments that Mr. Zimmer has faithfully recorded on his BlackBerry. He assured me that that's what he was doing with his BlackBerry, and I know he does. He uses his BlackBerry to record comments made by submitters like you.

**Ms. Browne:** Oh, he does, eh?

**Mr. Kormos:** Yes, he does. Thank you, Ms. Browne.

**Ms. Browne:** Well, I do certainly hope that these points are taken. It just seems that the government is very, very eager to move forward on the direct-access model. As I said, it's not necessarily the only model or necessarily the best model, but if they're willing to move forward on this, I feel that my suggestions are probably the best to make this model work most effectively.

**Mr. Kormos:** You've got some strong points. I hope the ministry takes them into consideration.

**Ms. Browne:** Thank you very much, Peter.

**The Chair:** Thank you, Ms. Browne.

1110

#### MULTIPLE SCLEROSIS SOCIETY OF CANADA, ONTARIO DIVISION

**The Chair:** The next presenters are from the Multiple Sclerosis Society of Canada, Ontario Division.

**Ms. Cathy Topping:** Thank you for the opportunity to present the views of the Multiple Sclerosis Society of Canada, Ontario Division, on the proposed changes to the Ontario human rights system. My name is Cathy Topping and I am a volunteer for the MS Society from St. Thomas. With me is Deanna Groetzinger, MS Society vice-president of government relations.

Another MS Society volunteer had the opportunity to present to this committee during the hearings in Ottawa this summer. At that time, we called our presentation "Rights in Jeopardy," and frankly, I was hoping that we would be able to change the title of our presentation today to something more positive. Instead, the title reflects the questions that continue to arise as we review Bill 107. Although we are pleased with some of the amendments that the Attorney General tabled last week, we'll have some comments about the amendments in a few minutes. But first, some background about the major concern that we still have with Bill 107.

I have had MS for 29 years, and over the past 20 years I have worked for greater accessibility and inclusion for people with disabilities in St. Thomas. As part of my work, I have been able to turn to the Ontario Human Rights Commission to resolve an issue in my home community.

Some background: I learned that a large department store on the outskirts of St. Thomas would not allow public transit buses to stop in front of the store. Instead, they had to stop on the street, which was a considerable distance away across a busy parking lot. This situation was truly dangerous for everyone, but especially people who use wheelchairs, scooters and canes. A friend who is blind and whose wife uses a wheelchair filed a human rights complaint. This in itself was an ordeal, since he was first told by Human Rights Commission staff that it wasn't a human rights issue. We persisted and an investigation was started.

The case reached mediation. Imagine how I felt when we entered the room and found the company property manager, her supervisor and a company lawyer lined up against my friend and me in my role as his consultant. But I soon realized that mediation is not the same as litigation and, in fact, the mediator was committed to finding a solution that was equitable to all. Thanks to some creativity, it was agreed that one of the public transit buses could stop in front of the store with connections to other city buses.

I wish I could tell you that we have a happy ending and that people with disabilities are using public transit in St. Thomas every day to reach this store safely and effectively, but unfortunately the city decided that instead it would prefer that people with disabilities use Para-transit, at greater cost to themselves and to the city. At this point, we have filed another human rights complaint—again, I should add, with some difficulty, because the Human Rights Commission staff in Toronto initially insisted that the issue was not one of human rights. However, it was, and continues to be, a learning experience. What impressed me was the mediation process and not having to feel that my friend and I were on our own when faced by experts and lawyers who lined up against us.

I'll now ask Deanna to review the proposed amendments to Bill 107 and provide our further recommendations about the need for mediation to be included within the Ontario human rights system.

**Ms. Deanna Groetzinger:** Thanks, Cathy. The MS Society has provided input for improving Bill 107 several times throughout the consultation process, and we are pleased that a number of our recommendations have been included in the proposed amendments.

We asked that all human rights complainants be guaranteed the right to publicly funded legal representation at all tribunal proceedings. The proposed amendment which establishes in the legislation a human rights legal support centre appears to meet this recommendation. The MS Society is pleased that this support centre is legislated, which provides it much greater protection from the whim of future governments and Attorneys General. We would like to stress, however, that the human rights legal support centre must be well funded from the very beginning and in the following years to ensure that complainants get the support they need. I'll return to that point a little later.

We urged that human rights complainants not be charged user fees or be made liable for the legal fees of those who have been charged with discrimination. The proposed amendment removes the ability of the tribunal to charge user fees or to award expenses, so we are pleased with this important change.

We also recommended that Bill 107 ensure that the Human Rights Commission maintain a true investigative and support function for human rights complainants by providing meaningful investigative and enforcement powers to the disability rights and anti-racism secretariats. The amendments to improve the commission's investigative and public interest powers appear to meet this goal.

The amendments to require appointees to the commission and the tribunal to have expertise and experience in human rights and to reflect the diversity of Ontario are positive and just make common sense, as does having the commission and the tribunal report directly to the Legislative Assembly.

We certainly very much applaud the extension of the limitation period to file a human rights complaint from six months to one year. In fact, we strongly suggest that this period be extended to two years, which is the period for many civil suits. However, there is still room for improvement.

I'd like to bring the committee's attention back to Cathy's account of the importance of mediation in the case in which she was involved. One of our major concerns with Bill 107 as initially presented was the removal of any kind of mediation from the human rights complaint process. In our view, involving the Human Rights Tribunal as a quasi-legal entity from the very beginning might make dealing with complaints unnecessarily adversarial.

With that in mind, we reviewed with considerable interest the recent amendment that would allow the tribunal to be able to make rules of practice and procedure, including alternatives to traditional adversarial or adjudicative procedures. If this indeed opens the door to a mediation process that is focused on finding equitable solutions and not on minute interpretations of fact, then the MS Society supports its inclusion. The devil, as usual, is in the details. The MS Society urges this committee to examine that part of Bill 107 very carefully and to further amend the bill to provide a mandated mediation procedure.

I want to come back to the funding issue. We've heard constantly this morning that the proposed human rights legal support centre must be well funded for it to be able to function effectively for Ontarians with human rights complaints. The Ontario Human Rights Commission was frequently and rightly criticized for failing to process, investigate and support human rights complaints. It has been criticized for being an inefficient gatekeeper and, worse than that, for being patronizing and removing control from human rights complainants. The proposals in Bill 107, as amended, should provide a better way to handle human rights issues in Ontario, but if this and

future governments do not commit to appropriate funding, then unfortunately we will be back where we are today.

**1120**

With that in mind, we urge this committee to ask the Attorney General to tell you—to tell all of us—how much funding will be available to the human rights legal support centre in its first year of operation and to provide projected funding for the following five years. We need to know that now, as a measure of the government's commitment to a truly effective human rights legal support centre. Telling to us to wait for the budget is just not good enough.

Finally, along with countless others, the MS Society is very disappointed in the government's move to invoke closure on Bill 107, which prevented many organizations and individuals from providing valuable recommendations about how to improve Bill 107. This decision was counter to the promise made earlier that there would be full and extensive consultations this fall.

Cathy and I are pleased to be with you today. We are very sorry that many others do not have this opportunity. So today, we ask the committee members here to use their influence to convince the government to allow these hearings to continue as promised.

Opposition members have offered to quickly debate the legislation early next year following a full schedule of public hearings. This is a reasonable compromise, in our view, and we hope committee members will urge the government to accept.

Thank you, and we look forward to your questions and comments.

**The Chair:** Thank you very much. We'll begin with Ms. Elliott.

**Mrs. Elliott:** I have to say I'm in complete agreement with you, especially with respect to the legal support centre. It is the linchpin, the fundamental piece of this legislation that has to be right in order for it to be successful. Yet while we've heard the Attorney General promise that everybody is going to have representation by a lawyer, he has also been quoted as saying that he's not putting more money into the system. So we're really left in a quandary. We don't really know what the intention is, and we've had no indication of where the funding is coming from, how much it's going to be or even what form the centre is going to take. So I completely agree with you on that.

Secondly, with respect to the compromise position you just proposed, I also think it's quite reasonable. It was put forward by my party leader, John Tory. It's not going to delay the process unduly. It will give us the opportunity to hear from the hundreds of people, frankly, who want to make presentations. I have to say that I'm learning something different with each presenter. I'm learning another aspect to be considered. The mediation process that you have raised is significant and something we've not heard very much about.

To me, it's a reasonable compromise. Mr. Kormos and I are prepared to sit all day—extended hearings. We

think it's vital that we hear from everybody on this. So again, I would also urge the government committee members to take that forward. It's a reasonable accommodation, and I'd urge you to consider it in the interests of all the many people who want to be heard.

**Ms. Groetzinger:** Thank you. We certainly learned a lot this morning, sitting in as we were able to from 9:30, listening to all the presenters. So I urge the government side to take that back.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, folks, very much. You should know that this isn't a new offer. It had been the agreement to sit through the winter break and have this matter ready for third reading and reported it back to the House for the session that commences on March 19. House leaders had agreed to that as recently as three weeks ago. So the time allocation motion came as a surprise—I say it came as a surprise; I could sort of read the writing on the wall.

Let's talk about your proposals around mediation. I'm a big fan, believe it or not, of dispute resolution and I think that, properly done, competent mediation is an incredibly effective tool. One of the problems that people have with the commission is that 11% or so of claims are denied pursuant to section 36. Effectively, these are people—again, we haven't had a chance to discover how capable that decision-making has been—who are being told, "Sorry, your claim, your grievance, doesn't fall within the scope of the legislation." The fact is that it's a law; it's the Human Rights Code and it outlines what constitutes discrimination. If you don't fall within the legislative categories, then you may well have been discriminated against, but not pursuant to the Human Rights Code. The commission has resolved over 40% of all cases with mediation. My concern with the proposal is this: The tribunal says that it will include mediation as a dispute resolution process, but before it can be allowed to do that, there has to be agreement that the complaint falls within the literal scope of the act such that the tribunal has jurisdiction. Do you understand what I'm saying?

**Ms. Groetzinger:** Yes.

**Mr. Kormos:** Yes, it is important that there be a capacity to resolve concerns, disputes, grievances about discrimination even if they don't fall within the letter of the law. This is what I think you're saying. The commission had a far greater capacity to do that than the tribunal will, because a respondent who is brought to the tribunal will be able to raise immediately—you want direct access; you got direct access because the respondent has direct access too—an objection to the tribunal's jurisdiction. It can say right off the bat, "The tribunal has no jurisdiction over me because the complaint, as written, doesn't fall within the scope of the act." That, in my view, is going to exclude a whole lot of the iffy cases—and I don't mean iffy as to whether or not there's discrimination, but iffy as to whether or not the act technically applies—from mediation sponsored by the commission/tribunal. That is truly, truly regrettable.

For instance, you talked about the city case, the city bus pulling up in front of the doors of the shopping plaza, the mall. Clearly, a commissioner had made a determination that, however regrettable that choice was by the city or mall, it wasn't something that was covered by the act—and fair enough. But, at the same time, mediation was available to the parties, and you got a resolution. That's a good—

**Ms. Groetzinger:** Sort of, yes.

**Mr. Kormos:** But otherwise nothing would have happened, right?

**Ms. Groetzinger:** Right.

**Mr. Kormos:** Because the argument was that it didn't fall within the literal scope of the legislation. This is the beauty about mediation: The parties can devise incredibly creative solutions by putting their heads together and working collaboratively, like we do here in the committee—I was being sarcastic—and finding solutions to a problem instead of relying upon an adversarial-based system. No matter how much the tribunal says it's going to relax rules, etc., it's still the adversarial system. That's, I think, important if you're talking about the broader-based, systemic discrimination where you want to have hard, universal, province-wide decisions or decisions that impact on the province. But when you've got these one-offs that may not fall under the letter of the law, they'll be tossed out of the tribunal in a New York minute, because the respondent is going to argue—the first instance—"No jurisdiction." The tribunal has to say, "Oops. No matter how flexible our rules are, we've got no jurisdiction. Ciao, see ya later, so long, been good to know ya." So I think you make an incredibly valid and important point about the incredibly important role of effective mediation. Unfortunately, notwithstanding the arguments that are being made, the direct-access model may well curtail mediated resolutions, and that's a problem. I don't know—because there's nothing in the amendments that addresses that, and nobody is talking about creating an alternative stream that should be literally an alternative stream that's legislated that says that you perhaps opt for mediation. There's nothing in the law that permits that now.

1130

**Ms. Groetzinger:** That's right, and that's exactly why we raised it today. While we saw the amendment about the tribunal being able to make different rules of practice as a really good step forward, perhaps opening the door to this, I see the role of this committee, as you go forward examining the bill, hopefully more than just today—if we get that change started, at least making some recommendations or making an amendment to the bill to actually include in there some type of mediation; I think that's really the major point that we want to bring forward today.

**Mr. Kormos:** And you make that point well.

**Ms. Topping:** Also, when we were at the tribunal, and it's a major shopping store in Ontario, the mediator said—

**Mr. Kormos:** Wal-Mart did it again?

**Ms. Groetzinger:** No.

**Ms. Topping:** No, we didn't say that. They said that this could be a class action suit across Ontario, and it could have been.

**Mr. Kormos:** You see, the problem is that it can't have been, because you don't have access to the courts on discrimination. That's the problem. You're precluded from using the civil courts. The Human Rights Tribunal has exclusive jurisdiction over human rights complaints unless they're ancillary to another action. In other words, if you got hit by a car, walking from the bus stop to the front door—huh, Mr. Zimmer?—then you might be able to add the discrimination claim on as part of it. The bill preserves that ancillary tort, if you will. So you guys are bang on on the mediation stuff. I don't think the government has addressed that.

**Ms. Topping:** Hopefully they will.

**Mr. McMeekin:** My good friend Peter Kormos makes some good points about mediation in affirmation of your obvious flagging of that issue. Hopefully the government will listen on that, so I want to thank you for that.

The Muscular Sclerosis Society of Canada has a long and very distinguished history of championing human rights issues for not just the persons associated with them but for all challenged folk. I can recall, some 30 years ago when I was the youngest member of Hamilton city council, that I had a chance to work with the MS Society and other societies to champion the introduction of the DARTS system in Hamilton. To this day, there continue to be some challenges with that system, so I appreciated your story very much as well.

You've commented that you've had the opportunity to have input several times through the process; that clearly shows. I appreciate your positive comments about the proposed amendments and your very reasoned and assuredly positive comments about mediation about how we can make the system better.

Is there anything else you want to say about mediation or about specific changes in that area that you want your government to hear today?

**Ms. Groetzinger:** I think the part that impressed Cathy and me, when we were viewing what happened in this particular case, was the fact that it wasn't turning on minute legal details—not to say anything against lawyers, because the system obviously needs lawyers.

**Mr. McMeekin:** You want the benefit of the doubt.

**Ms. Groetzinger:** Yes, but the mediator was able to bring a broad range of thought to it. It wasn't just turning on legal points, but there was a thinking-outside-the-box kind of issue. I don't know how that can be legislative, but I think a process can be legislative.

Cathy, was there anything in particular that you felt?

**Ms. Topping:** I felt comfortable with the mediator when I realized that the lawyers and the other people there were on the same plane as I was.

**Mr. McMeekin:** As one who has had some training in mediation, I think that process is really important, and I appreciate the comments that you've made. Thank you for your great advocacy work. I appreciate it.

**Ms. Groetzinger:** Thank you.

**The Chair:** Thank you very much.

**Mr. Kormos:** I do want folks to say hello to my good friend, my new good friend, Ted McMeekin, who interestingly reveals himself as having an interest in dispute resolution.

*Interjections.*

**Mr. Zimmer:** Mr. Chair, can we take a few minutes?

**The Chair:** Sure.

**Mr. Kormos:** Middle-aged-male break?

**The Chair:** We'll take about a three-minute break.

*The committee recessed from 1135 to 1141.*

## LOW INCOME FAMILIES TOGETHER

**The Chair:** The next presentation is from Low Income Families Together.

**Ms. Josephine Grey:** Good morning. First of all, I want to thank you for the opportunity to present. I gather it's a fairly privileged position at this point, unexpectedly. Actually, the change to the process has changed my presentation somewhat. I want to apologize for not having a document for you. I was beginning to work on such a thing, but my computer crashed on the weekend and that was the end of that.

**Mr. McMeekin:** I know the feeling.

**Ms. Grey:** Yes, very frustrating. I'm going to be pretty much off the top of my head. However, I'm going to raise some issues that have been disturbing myself and my organization for a very long time.

I am a mother, a widow. I've been raising my children in a poor community for over 20 years, and I've had several instances where I felt very strongly that I would like to be able to take a case to the Human Rights Commission because of very clear forms of discrimination that myself, my family or others in my community faced.

I'll back up a little bit because I think this is an important point. I don't think you're going to hear this from everybody else, or if perhaps there were more hearings, you might have, but at any rate, while I have issues with Bill 107 and definitely issues with the process, I want to go further back and discuss an issue that myself and my organization have had with the commission and the code for a very long time.

As I was saying, I've raised four children on my own in a poor community for over 20 years, and there have been a number of instances where I felt that perhaps the only recourse or remedy for the situation I faced would be logically the Human Rights Commission, particularly because of its accessibility. However, the code doesn't actually cover most or many of the situations that I faced. The problem is that the code leaves out a very specific group, and that group is people living in poverty. The problem with that is, when a lot of people face discrimination because of poverty, they look around for something in the code that they can attach to in order to be able to take a complaint, and because the discrimination actually was poverty itself and the other ground, be it age or disability or whatever, was not necessarily the specific

cause of the problem, the case becomes weak. Although the discrimination was very clear, the problem is very clear, it's definitely systemic and definitely needs to be resolved. So then we have a lot of cases coming through where the ground being used is actually a proxy for the real issue. Personally, I found it offensive and abhorrent to be required to do that in order to challenge something that was clearly directly based on my economic status.

To give you an example: I'm a social housing tenant. I'm a rent-geared-to-income tenant. There were times when I paid as high as \$1,400 and \$1,500 a month for my kind-of-four-bedroom unit. When I was clearly facing discriminatory practices in terms of maintenance and the way I was being treated by my landlord and you could see the vast difference between the way I was being treated and the people paying market rent were being treated, I just didn't want to have to pretend that it was my racial background or come up with some kind of fudgy proxy for the fact that no, I'm being treated poorly because I'm an RGI tenant, which is because I'm a poor person, which is because I'm a single parent, whatever. The problem is that poverty is often caused by subtle systemic discrimination, but once poverty becomes the core of the issue, it's moot.

How serious is this? It's so serious that, because there is nowhere, in domestic law within Canada, protection for people who are discriminated against because they are poor, I was able to take a report about this province, about human rights violations in the area of economic, social and cultural rights, directly to the United Nations in Geneva. That's a very unusual path to be able to take. You usually have to exhaust all domestic and regional remedies first, but we haven't signed the OAS economic, social and cultural rights covenant and we don't have any domestic protection, so I'm able to go directly from my house to Geneva.

That's embarrassing, I'll tell you, because most countries in Europe will include economic status in their codes. In fact, most countries in the southern hemisphere will acknowledge poverty as a ground. But here we are in the wealthiest country practically in the world and we refuse to acknowledge poverty—well, we tend to refuse to acknowledge its existence, but this spreads throughout our system and creates a huge flaw.

So I've had a big problem with the commission for a long time because I didn't want to play. I didn't want to pretend that there was another issue. Now I'm formally considered disabled and I'm in a position where I can actually take a complaint to the commission to resolve the fact that I've been living in miserable conditions for over 20 years and it has had a devastating impact on myself and my family. Frankly, I'm more thinking that maybe I should do a lawsuit because there has been a lot of damage, but it's a pity that I have to wait until my kids have been screwed up, my family and my life have been screwed up and I now probably justifiably could be compensated by a lot of money. I shouldn't have to go through that and go that route and take a lawsuit when I should have been able to originally go and make sure I

was treated fairly in the first place. I think that's a big problem, and I shouldn't have to wait till I'm disabled by the situation to have a ground to go to the commission.

One of the main reasons I wanted to do it is because I wanted everybody living in housing to be treated with some respect and dignity and have their housing be safe and workable. My water doesn't work at least half the day, every day. My power spikes or goes out. That's why my computer crashed and I can't bring you a document: because it spikes and goes out regularly.

I have no fire safety exit. I have a leaking roof. I have mould. There are so many problems in my house. My house has been broken into over 15 times. I've been robbed repeatedly because it's not secure, but none of this matters because I'm just an RGI tenant and that's because of poverty, and this commission couldn't do anything for me. So you have a problem.

However, I don't expect this process or this bill to address that. What I would like to see, however, is an honest commitment by this government to human rights in this province to the extent that we could be certain that the government would consider such a thing and figure out a way to close that hole, close that gap.

I will remind you that state parties to the Covenant on Economic, Social and Cultural Rights include provincial governments, and this province has done absolutely nothing, although we've gone three times now to Geneva to show how Canada and the provinces are utterly failing to protect our economic, social and cultural rights in many ways. So that was really the main issue I wanted to raise in this discussion around Bill 107 and the commission.

#### 1150

However, to back up a little and get back to the matter at hand that most people are discussing, I want to add my voice to some of the issues that have been raised, particularly with the process. One thing that made me feel there was a reason to have faith in government back in the late 1980s and early 1990s was that I observed a process of legislative reform that I think really seriously made an effort to consult stakeholders, to consult people affected. It was social assistance reform. This was of course stopped in its tracks and basically done in by the federal government's change to the Canada assistance plan and everything. However, what I observed in Ontario was an honest-to-God effort to involve people who were directly affected by the system, who were clients, people who worked within the system who were part of the delivery, people who had expertise about the system, whether they be lawyers or whatever. It was a broad process. It involved a variety of different methods to gain input, and I think something on that scale is required for this.

I think we're talking about not just a body, a mechanism; we're talking about something that contributes to our whole identity as a society. We're talking about something that can give people a sense of faith in governance and government, in the remote idea of accountability. I think people's view of politics, democracy and

governance is becoming more and more cynical, more and more despairing, and at this moment of all moments in our history as a country, it is really dangerous to be looking for a quick fix, for a way to just make this efficient and convenient, a budget-cutting exercise, which as far as I can see is all that it's about.

This is a dangerous thing to do. We already have a lot of anger and cynicism around governance and politics in this province. I think this is going to leave scars on our body politic that will take forever to heal, because if people are not heard, if they're not engaged, if they're not involved, if they don't feel like they were part of this process of bringing about a human rights system that's meaningful, we're not going to have a working democracy for quite some time. Those who care the most about participating in democracy tend to also care very much about human rights and how they're managed. If we want to have that kind of acrimony and anxiety and distrust continue on for decades probably, this is a good way to do it.

I myself am really frustrated. I was already a bit frustrated about the whole process, but when I found out that the people who work within the system have not been given a voice, have not been given access to this process and not been consulted, I was appalled. I could not believe that. So I went and consulted. I'm a person who wants to be a client. I'm on disability, but I can pick up the phone. I consulted with people who work within the system—subtly, because I didn't want them to feel like they were doing something they shouldn't do. I consulted them as a potential client with what the issues are that they face. I said to them, "I've been told I can come to the commission, but it's going to take me about five years. That's too long. My conditions need to change sooner than that. What's going on here? What is the problem?" They were very clear about it. They feel they would be able to handle my case but there aren't enough resources or enough people.

That's a simple thing. This is not complicated. If you want the machine to run—I hear this metaphor about the engine in the car needing to be fixed. First of all, if you run an engine on low gas and without oil, it breaks down. This is what appears to have happened to me. I'm not saying it's flawed—and I don't like section 36 either. I think there's a lot of issues with the gatekeeping. However, it was pretty clear that a person like myself would have been able to have a resolution to my issue were there enough resources there, now that I'm disabled. Let me just make that point.

That was really obvious to me, that people within the system are the people you should be talking to, at least in part. Don't tell me there's a conflict of interest. I think a lot of the people who have been able to give a lot of input to this did have a conflict of interest. The people who work within the system have, no more so than they did, and they're the ones who know best. If we go back to the engine analogy, when you're fixing a car, surely you talk to the driver about the problems they're experiencing on the road. Furthermore, if we're going to have this whole

exercise to fix the engine, and that's allegedly the whole problem, doesn't it need fuel once the engine's fixed and don't we need to know that we're going to have a steady fuel supply so there's actual funding to make this thing run?

One thing I'm really concerned about is, there's been a growing trend in our governments to say things that they don't back up with actual delivery, that they don't back up with accountability mechanisms, that are not backed up with fact, and this is very frustrating. When I go outside of Canada, people say, "Oh, it's a wonderful multicultural country," yada, yada, yada. Actually it's become a wolf in sheep's clothing, because so much of what we claim to do in this country no longer actually applies. It doesn't actually work on the ground. I don't want to see Ontario introducing a Human Rights Commission that's just more of that.

I also want to point out that if we have a huge caseload and a huge backlog, that's because there are a lot of bad laws. There are a lot of problems systemically that are creating an awful lot of cases, and you're not going to fix them on a one-at-a-time basis. You cannot resolve these issues by having one case after another after another, which is expensive, time-consuming and allows the problem to continue for a very long time.

You have to have a strong systemic reform component in this commission's setup. If you don't have that, you're just wasting a lot of time and money, but more importantly to myself and my community, you're ruining a lot of people's lives. If you don't take a systemic, preventive approach, people's lives go down the tubes while we're waiting for enough individual cases to back up, that finally somebody decides there's a problem. You cannot govern like that. That is not democracy. That is not how governance should work.

Back to the legislative reform I observed. There was an understanding at the time that if you want a system to work, you have to have quality control. You have to be able to change regulations based on flaws that are exposed by continuous checking of how something is functioning. The Human Rights Commission is very helpful for that. And it's not just within government and it's not just things like the social assistance system or the housing system that the Human Rights Commission could be doing a lot to resolve. It's also issues that I've seen a lot of lately; for instance, large corporations running telephone services.

A woman I know who got a cellphone for herself and her daughter and was unable to pay the entire bill is continuing to be charged every month for the service and the interest on the debt while not receiving the service. This is a single parent trying to raise her daughter, self-employed, and she's going broke. She's not able to make her other payments and obligations because a corporation decides that it can gouge her in this fashion.

People in these kinds of situations don't think about going to the commission as a way to solve this because they don't feel or believe—again she's being dealt with this way. It's a poverty issue. They can take advantage of

her poverty to gouge her, knowing she can't come up with the full payment, but she doesn't think about the commission as an answer to this. So what you then have are people with all these little things that pile up. Sometimes they're from large corporations that aren't being held accountable by anybody; sometimes they're from large, flawed systems that aren't being managed properly. These things accumulate and ruin people's lives—they really do. And then what happens? The government has to step in and clean up the mess. The government steps in and pays for the hospital bills, the foster care, the prison, whatever it is.

So what is being created by moving back and moving away from being seriously accountable, from actually taking human rights seriously and from actually being willing to go through the entire process of ensuring that it's a proper system? All we end up with then is endlessly more problems, endlessly more of a social deficit and endlessly more cost that you somehow have to scramble to fulfill, or you just decide to sweep it under the carpet and ignore the fact that you have a growing population of people who are invisible, desperate, all over the streets, losing their minds, homeless etc.

That's what I see. Maybe you don't see it, but you don't live in my neighbourhood. You don't go out late at night in my neighbourhood. You don't see what I see. I know the people I see on the street shaking from drug addictions, etc. I know what their lives were like 15 years ago, and I know how they got to where they are today and why nobody knows they exist and nobody cares. It's because we have lost accountability in human rights, because the previous government created vast amounts of damage to my community, to my family, to people like me.

Here we are at a moment where you, this government, have an opportunity to begin to clean up the mess, to use a real system to actually turn this ship around, and what? We're going to just flush the whole process down the toilet and come through with a quick fix that makes it look good on the surface, so that people who wouldn't need it and wouldn't know about it will say, "Oh, look what they did. Isn't that great?" Meanwhile, the problem will continue worse than it was before.

From what I can see of Bill 107, why is this tribunal not bound by the Statutory Powers Procedure Act? How can any judiciary or judicial process not have those kinds of boundaries or those kinds of requirements? What's the criteria for selecting the people on the commission or the tribunal? How do I know that if I do bring it to the tribunal or the commission, I'm going to be actually adjudicated by people who know what they're talking about, who will understand my situation at all? How do we know that? How is anybody who actually needs it going to trust this thing, knowing that there are all these holes and gaps?

To me, this bill simply raises more questions than it answers. The fact that it's raising more questions than it answers, knowing full well how legislative reform can and should be done, gives me such a bad signal that all I

can think about is, "Okay, if I want my things resolved, how am I going to sue?" Well, the government is going to pay a hell of a lot more if I sue than if I go for a systemic solution that maybe compensates me a little bit and ensures that the problem no longer exists and no longer continues. I think that's a real pity, a real shame.

I've heard a lot of frustration from people working within the system, from people trying to access the system. There's no question that it needs to be done, but I want to see it done right. I think if you can figure out a way to make sure people actually have all the information they require, like reopening these hearings, with all the talks that everybody needs to have in order to be able to comment on it—

**The Chair:** Ms. Grey, we have a vote coming up in the House, so I'm going to interrupt you there and allow you to continue once we come back, which will be in about 10 minutes. So I'm going to break for 10 minutes and then we'll be back.

*The committee recessed from 1202 to 1213.*

**The Chair:** We're going to resume our hearing. Ms. Grey has 10 minutes left. I'd ask her to continue.

**Mr. Kormos:** You saw the vote? That's what we do. That's why we're paid the big bucks.

**Ms. Grey:** What did you vote on?

**Mr. Kormos:** We voted on a very good piece of legislation—

**Ms. Grey:** It looks like it, because somebody actually agreed.

**Mr. Kormos:** —because I supported it.

**Ms. Grey:** Okay. I think was in the middle of tearing a strip off. I got stopped in my tracks a little bit.

I'm very concerned about this notion of having the commission do advocacy and education. I don't think that's really what we want a Human Rights Commission for. We used to have a voluntary sector that did pretty good advocacy, but according to new funding guidelines and Revenue Canada restrictions and the like, it has become incredibly difficult for anybody to do advocacy. However, I don't think having a Human Rights Commission diverted to that function is very helpful.

The Canadian Human Rights Commission does a lot of advocacy and education, and frankly, nobody really knows anything about them. They have no power; they affect nothing; they help no one. That, from what I've seen, is an example of a commission that does advocacy and education. It's pretty useless, really.

There are lots of people who can do education. I've spoken to the teachers' federation in the past, and I know they've been interested in doing it through the school system, for example. That would be really great, because I find it extraordinary how many elected officials and representatives have no idea about human rights. They don't know what our international commitments are; they don't know what our code is about; they don't know how it works. So advocacy and education are absolutely crucial, but the Human Rights Commission is not the place to do it, as far as I'm concerned. When it comes to perhaps educating a corporation that it should treat its

clients and customers with respect, that's great, but I'd rather that they actually be able to enforce it.

Employment equity is an example. There was all this talk about—well, it's back to this voluntary versus mandatory sort of argument. What we've seen is a lot of the push toward volunteerism and asking big institutions and corporations to voluntarily do nice and good things. That just doesn't work—it doesn't happen—and what you end up with are endless battles, but a lot more victims who don't go to battle. That's the bottom line.

Without an employment equity law, we have seen a vast increase in employment discrimination, which has led to a horrendous disparity with people of colour and immigrants of colour being shut out of professions that they're qualified for, even though we bring them here on that basis. So what we have is a whole bunch of people who are highly qualified, who could be paying lots of taxes and having great lives, but instead they're suffering, they're frustrated and humiliated, their lives are going down the tubes, and their kids are running amok—trust me—in my neighbourhood. And why? Because no one is obliged to actually make an effort to ensure that people who have come from away and are of colour and have long last names and funny accents actually get hired. That's what happens when we go with voluntary instead of mandatory, and then we're not going to have some way to systemically resolve that kind of issue? I think that's a disaster—a disaster.

Speaking of which, people who are suffering from discrimination and suffering the results of being treated badly by large institutions—we talk about this legal support centre. I'm very concerned about that. I think people need choices as to how they're going to be represented. People need to know for a fact that they're going to be represented. If it gets into some kind of nonsense about people maybe having to pay other people's legal costs, that will definitely shut out—most people would never even consider going, and that will be the end of that right there.

If it's going to be an actual Human Rights Commission, it has to be accessible, it has to be fair and you have to know that you're going to be represented or you can have help. You can't have people being turned away because the staffing within the commission has to reach a numerical target and therefore they'll not necessarily take the time required to help somebody with their case.

One of the things that really concerns me most about this is that a weak complaint is one thing, and turning down a weak complaint is one thing. But very often what we have is a weak complainant. It's ironic, because one of the most common results of having your life ruined by a large institution or corporation is that you become less capable, less aggressive, less assertive, less able to defend yourself over time. If you've been worn down by this kind of thing, you need somebody to support you in a good way; you need somebody to take the time to tease out what is strong about the case.

A person who is the most vulnerable is going to be a person who needs more help and likely has a very strong

case. But if you don't have the appropriate sort of supports and the appropriate kind of representation, they're not going to get what they need. That also means that perhaps they need to have the option of working with somebody from their own community whom they trust and feel comfortable with, who may or may not be a lawyer. That's sometimes really important to people.

#### 1220

I haven't actually represented someone, but there have been many times when I've helped someone through an issue or situation and I was the only person that person would turn to because they trusted me in the first place. I'm sure that's a similar kind of thing that faces people going to the commission. If the commission actually takes human rights seriously, it will recognize that many of the people who need the commission the most are those who are the most vulnerable and therefore need effective support. I'd like to see that guaranteed.

That's the problem with this: There are no guarantees, there are no timelines, there are no commitments, there are no targets. In my experience, there's never an example of an effective reform process that doesn't include those things. If we're going to have a commission that's improved, a tribunal that works, if it's not going to be the kind of thing we saw with the Social Benefits Tribunal—for a while under the Harris government, there was a bunch of appointed people on that tribunal who had no clue about social assistance, knew nothing about poverty, knew nothing about the fact that no one in this province could actually afford to have any of their basic needs met, given the cost of living and such. We had a tribunal where one or two guys who had been appointed as patronage, or whatever they call it, would go out and wreck somebody's life because they didn't care and they didn't know.

I don't want to see that kind of thing happen. I'm not saying this government would do that, but if you leave it open; if we don't have guarantees, rules and criteria; if we don't have some independence in selecting the people who are going to make these judgments, that's the risk we face. I've seen a lot of people's lives ruined by the sheer ignorance of people who were put in the position to make life-and-death decisions for people who are vulnerable, and that can't happen. That can't be, especially in a country like this that has the capacity and resources to be a good example, which leads me to something that I think is also really vital that we can't forget.

Unfortunately—it used to be fortunately—much of the world looks to Canada for leadership specifically around human rights. We have a reputation. We have been involved in many exercises in many countries to strengthen their human rights systems. What kind of hypocritical, ridiculous nonsense is it going to be if we allow this to continue the way it's going: a process that's incomplete, that isn't actually honest, that isn't involving the people who need to be consulted, that isn't taking the time to really go to the communities that need this commission the most and find out what the barriers are, and then it's likely going to produce, therefore, a shell game, a

facsimile of a Human Rights Commission? It would be bad enough if we weren't supposedly a world leader in actually doing human rights work and being a human rights example, but because we are, it's all the more important.

I'm just asking that the government reconsider closing the hearings, that the government reconsider how this process is being undertaken. First and foremost, I'd like an opportunity to come back and present when I can see the actual wording of what is being proposed because, personally, I am not going to even bother until I know exactly what it says. You cannot comment in a vacuum.

Vague promises are not enough to have a consultation on. They're not enough for public hearings. If you ask me, if you really look closely I'd say it was a violation of administrative law. Administrative law requires that people actually look at a bill and its wording and its full text in order to consult on it, and then we take it through to the next step of the process.

I think the idea here should be to figure out how we can save face perhaps, but move on and make sure we have a fully amended bill that is then given a full set of public hearings, full consultation, including people who are vulnerable so that we can make sure the barriers people face, like the one I raised and that I bet half you people never even thought about, that if you're just a poor person, you've got no access and this means nothing to you anyway. Go around and find out about how that works.

**The Chair:** Thank you, Ms. Grey.

**Mr. Kormos:** On a point of order, Chair: I'm shocked that Ms. Grey would suggest that legislators should read bills before they vote on them.

**The Chair:** Thank you very much. The next presenter is Aba Hammond.

**Ms. Grey:** By the way, can I just please leave one thing that I did bring and maybe somebody could make a copy? It's the Covenant on Economic, Social and Cultural Rights—the short, plain-language version, easy to digest. It will show you that in fact all of you are bound by it, and if you want this to work, you'd better respect it because otherwise I'll be going to Geneva again.

**The Chair:** Thank you very much.

ABA HAMMOND

**Ms. Aba Hammond:** Hello.

**The Chair:** Hello, Ms. Hammond.

**Ms. Hammond:** My name is Aba Hammond and I'm representing myself as an individual woman with friends, but at this point it's purely on my interest as a Canadian citizen and what I perceive as the distinction between the existing Human Rights Code and what it actually does to women like myself and what this new one would supplement or not. But I'll stick to what it has done so far.

My Canadian experience as a woman living among other immigrants in a minority sense with non-literacy

and non-affluence and isolation based on marginalization as a result of many factors reveals many things to myself, because my—I have to wear my glasses just so that I don't get too much distracted. As a person who came to Canada as a sponsored fiancée, I departed from that basis into a place where I never knew existed, and what I found was highly troubling and problematic; however, I had to work through my traumas in order to at least return to a sense of order. I trust that with me knowing better as a woman, without family and other support systems that persons relatively young usually have, I felt I must speak for my daughter because she was born here, but these behaviours that I face would be visited upon her.

Human rights in principle exist in Canada among the general mainstream, but in the immigrant society attacks on the definition of what citizenship is, the obligations to continued citizenship and knowledge about the Canadian Constitution affect how people treat each other. This is due to many factors, but what I see as most literacy- and poverty-based.

The second aspect is, these behaviours allow for infringement on individual rights and behaviours that normally wouldn't happen. For example, people feel it is their right to attack others, their right to freedom of expression, freedom to assemble, freedom to associate, to worship and congregate with equals with the open-mindedness required for living as individuals and then as a collective without causing human suffering. The denial and misrepresentation of the geopolitical and economic also show dimensions of the place where I came from into Canada. The construct of Africa being a vacuum and a timeless zone without social hierarchies and economic sustenance already greatly influences how people choose to act and behave towards persons like myself. It creates abuse, intolerance, violence and physical attacks.

There is also the retardation of social progress and class mobility by exposing knowledge in other secrets, by profiling and by distortionist tactics, and usually it's in isolation. I have been under that, so I know that for a fact.

Since 1978, I like Canada, but I felt regressive because, coming here as a young teen, just at the end of it, I felt that a marriage would sort of shelter and bring a progressive aspect to my life and some amount of stability, which I never felt would be otherwise. But I faced discrimination, perpetual exposure to the ravages of newcomers and hatred and appropriating of my knowledge and experience in a consumer-based rather than sustaining community.

1230

I also had interference with mate selection, functioning with my own children and my achievements towards self-actualization through work, sustained efforts in education and otherwise to devalue and shrink that into a place where there are moral recriminations rather than paying attention to individual legal ramifications of citizenship or immigrant status.

Again, the exposure to the eyes of those, for instance, leaving a marital home that is owned to a rental accommodation, people hide cameras in places and expose your

nakedness to others as a means of shaming and violating or trying to humble you. It's also attacks through mental—in addition to profiling—brainwashing sessions repeatedly at night by trying to take back what is white or non-African, which is very problematic because the very definition of personhood is rooted in social contexts that are restrictive to the individual rather than the onlookers.

There was no representation whatsoever of peers, of those of like-mindedness or those who've had similar experiences. Rather, there were what you call simulations based on having watched, and mind-reading and re-enacting. That's quite devastating to any human being, to be told your secrets, to be told your personal life by those you have welcomed or given permission to be near you and, on top of that, to be insulted and harassed repeatedly.

There is police brutality. In the minority-based representations that are funded by government under the existing rights system, there are no persons of my background—none whatsoever. If they do show up, it's pitting rural against urban and the inclination to support or even pay attention to what they call "stories," but actual experiences of a woman trying to remain respectable under very difficult circumstances, having predatory behaviours and opportunism all over, are lost and not considered.

There are manipulations as a result of trying to seek a way of ordering what seems to go awry in the context of a Canadian rather than an African import of reality, which I'm not familiar with, which I do not know about and which I've been forced to or been forced by brainwashing which attempted to dilute my memory or remove my memory and replace nightly, and it's been going on for many, many years.

I have to go on public transit systems, and there is a linguistic barrier. I'm a bit emotional now, but I'm sticking to reason. There are lots of linguistic barriers and it determines how we behave. For instance, if there's a need to deconstruct thought and put it into racial terms, I beg to differ because even to conceive of thought, you need to have language and the language of your sleep and your dreams is your language of inheritance or action.

Again in the publicly funded services for minorities, like the law, which seeks to deal with landlord and tenant actions and abuse, there's always the need to bring a black male or, in job search, to just stand and block the way, or regionalism, such as West Indian, all others, and if an African shows up, it's not as an equal whom one could relate to, but one who would chase you out with abusive words and systemic violations.

So there is a problem under the existing system with the non-sequitur form of thoughts. I beg to add that because I am not here to change anybody's way of thinking, but it truly has affected my life. It has removed me from affluence into poverty. Even though I have Canadian experience and education and exposure to all the things that make me—and also in my previous background—function at a level that would enable me to be financially independent, this sort of behaviour curtails my marketability, because it watches, and when it profiles, it shows

up and distorts and disrupts every commercial activity. Voice-overs took my son away from me etc.

It is not rooted in the currency of actual moment and place and the legal definition of "community," which is one that supports and shares and comforts and allows you to be the best you would be in a legal sense first, because moral issues and faith are personal, but it assumes the role of god—with a small "g"—and tries to limit even as it is limited by its own origins. So, in effect, where you live becomes your stopping point. Rather than a place of rest, it becomes a place of decimation and de-skilling, if I may use the word. If you have education past grade 12, it's a place to take it out of you.

I am very cautious because I'm not at the point of pointing fingers at individuals, but the police in my neighbourhood—I was harassed by a group of black people on a TTC bus. I called for the police, and when the police came, they reacted opposite to my expectations and I was physically thrown on the ground, so I do have a back injury. It's the second physical throwing on the ground by a male. I've been back in Ontario—this is my fourth year—and I've been physically thrown on the ground twice in public. So I have a physical injury, but I do not want to claim ODSP because I'm not only too young; I have skills and I would like to work rather than retire, because I haven't earned what I could have.

Now, the strategies to obtain information, profiling and all that, violated my fundamental human rights. I had an abortion as a married woman. I had to, and I explained to the doctors in Vancouver, and subsequently things did happen to me that, as a very young mother, I wasn't aware of being enacted around me. I do not want to go into details, but I've suffered extensively as a result of this form of violation and intrusive attacks into my body. I've been raped many times, not by consent or association but by being in places where I never knew such things happened, and the assumption of blackness being that of the void and a place where no rules apply.

I could go on and on, but I took an interest in this bill because it's significantly clear to me the politics that gave birth to the Darfur crisis in terms of being an African born at a certain time in west Africa and a certain amount of protection. I could relate to the Darfur region crisis, where women and children suffer, and all the other regions, but in Canada it's highly unacceptable due to the representation of Canada. I remember from the Lester B. Pearson years, which I'm very proud of, through the Trudeau era to the present. I look at the men and women with great respect and affection, although some people within the greater communities seem to think that our citizenship could be recalled at any moment and our properties and rights taken over by draconian measures.

I'm here to add my voice. Most of my friends have left Canada and I have lived in isolation for four years. Nobody's visited me. I face 24/7 voice-overs and brainwashing, and I wouldn't want to go into how it came about.

I also went to Africa in 1999-2000. I stayed three months. For every month, I stayed a week in hospital, so I was in for nearly a month, nearly killed, and rallied,

taken over by a group of persons who feel that blackness ought to be a certain way, without education, especially women.

I am very concerned that global politics, with its sinister dimensions, will have a foothold in Canada to the point of annexing our citizenships to other causes outside the land of Canada and exposing people like myself to the violence that comes with those regional conflicts.

I beg this honourable Parliament and its members to consider their responsibility and their privilege as champions of democracy and the democratization process that they are part of and to please be mindful of those who do not have the family, the wealth or the protections that could usually be made available by hard work, but, because all things are being sacrificed to other issues, to please rise above the regionalisms. I came to a Canada that was a beautiful land. The standards here were the highest that I could ever find for single people and students, and at present, students, professors—and I'm not one—and all people that I see and pay attention to do suffer quite a lot. It's not just impoverishment, but it is robbing from the children in the strollers.

I would also like to say that the only revolution worth fighting for is one that pays attention to the quality of life and the progressive needs of women, children and fathers.

This is my perspective and this is why I came here, to speak as an individual but in a community that seems to be disintegrating, where people feel it is their right to attack people, not on the actual basis of actual evidence or behaviours but to play judge and jury based on their whims of who ought to be white or green or blue. It's quite problematic because my legal entrance into Canada did not give that addendum to my citizenship or my landed immigrant status.

**The Chair:** Thank you very much for your presentation.

**Ms. Hammond:** Thank you, sir.

**The Chair:** That concludes our meeting for today. We'll be meeting next Wednesday at 9:30 a.m. in this same room. Thank you.

*The committee adjourned at 1242.*

## CONTENTS

Thursday 23 November 2006

<b>Human Rights Code Amendment Act, 2006, Bill 107, Mr. Bryant / Loi de 2006 modifiant le Code des droits de la personne, projet de loi 107, M. Bryant .....</b>	<b>JP-957</b>
Subcommittee report .....	JP-957
Ontario March of Dimes .....	JP-960
Ms. Andria Spindel	
Mr. Warren Rupnarian	
Ontario Secondary School Teachers' Federation .....	JP-962
Ms. Rhonda Kimberley-Young	
Mr. Maurice Green	
Research and Development International, Inc. ....	JP-965
Ms. Angela Browne	
Multiple Sclerosis Society of Canada, Ontario Division .....	JP-971
Ms. Cathy Topping	
Ms. Deanna Groetzinger	
Ms. Josephine Grey .....	JP-974
Ms. Aba Hammond .....	JP-979

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14  
19

GOVERNMENT  
1018

JP-35



JP-35

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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 29 November 2006

# Journal des débats (Hansard)

Mercredi 29 novembre 2006

### Standing committee on justice policy

Human Rights Code  
Amendment Act, 2006

### Comité permanent de la justice

Loi de 2006 modifiant le Code  
des droits de la personne

Chair: Vic Dhillon  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 29 November 2006

Mercredi 29 novembre 2006

*The committee met at 1000 in room 151.*HUMAN RIGHTS CODE  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE  
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

**The Chair (Mr. Vic Dhillon):** Good morning, everybody. Sorry for the little delay. Welcome to the standing committee on justice policy. We're here today to consider Bill 107 clause-by-clause.

Are there any questions, comments or amendments, and, if so, to what section?

**Mr. Peter Kormos (Niagara Centre):** As everybody regrettably knows, this is the only day of clause-by-clause consideration because of the government's closure motion, because of the government's guillotine on debate, on participation, and even on clause-by-clause. The motion that was passed by the Liberal majority requires this committee to sit this morning, to commence with clause-by-clause, and that means consideration of the bill itself and of any amendments. There are numerous amendments that are going to be moved.

The time allocation motion imposed upon us by the government majority requires us to sit this afternoon. As I recall—the clerk will correct me if I'm wrong—at 5 o'clock all amendments are deemed to have been moved. Any outstanding amendments won't even be read onto the record, and then the committee is required to commence voting on them. So the committee will be forced to vote for or against amendments that have not been read onto the record, amendments about which there was no opportunity for questions by opposition members as to their intent and rationale and the motivation of the mover. That's what time allocation means, and that's what it does to parliamentary discourse.

I do not, New Democrats do not, and a whole large portion of the provincial community does not believe in the privatization of human rights advocacy. There are others who do; these are the direct-access people. I understand the argument and I respect the argument. I disagree with it. I respect it. It is an argument. It's an argument that was advanced by Mary Cornish back in 1993. I disagreed with Ms. Cornish then and I disagree

with her now, but I understand the argument. Quite frankly, I was as pleased to hear from advocates who presented us with intelligent, rational arguments for that position as I was to hear from people who, like New Democrats, believe in the maintenance of a public prosecutorial system. Of course, the time allocation motion means that we don't get to hear from either of them.

It was remarkable that towards the very end of the government-forced closure, even as ads were appearing in the Toronto dailies telling people they had until December 15 to apply to appear in front of the committee, we were hearing from the final submitters; final not because they were the last people who wanted to, but final because the government's time allocation motion, its closure motion, the McGuinty muzzle motion, as some wits have referred to it, prevented any further people from appearing. But it was remarkable that in those very final moments we began to hear from some people who had some remarkable things to say about some of the commentary that had taken place up until that time, in terms of identifying some of the groups and their motives for supporting Bill 107 and questioning the ability of those groups to hold themselves out as spokespeople for the human rights advocacy community.

So here it is. Look, I won't be supporting the bill. I've read the government amendments. There are a few more that are going to be given to us in short order, and I'll be speaking to that in just a minute. I won't be supporting the bill. I'm loath to move amendments to a bill that I don't support regardless, because I fundamentally disagree with the proposition. But at the request of and on behalf of concerned parties, interested parties, parties who will continue in their struggle for human rights in this province, I will be moving a number of motions and supporting them when it comes to voting for them. But I want to make it very clear that by moving them I am in no way endorsing the fundamental changes to human rights enforcement that Bill 107 contains, which takes me to some new amendments that are going to be introduced but this morning.

I should indicate that there are, quite frankly, blind people who know what the NDP amendments are going to be because they were consulted in the course of preparing them. So the amendments that are being moved by the NDP today will come as no surprise to them. But it raises once again just the ironies that have repeated themselves during the course of this committee's brief process. Here it is, a committee about human rights,

about discrimination, and the government's going to come up with amendments this morning—look, I appreciate that they initiated the Braille process promptly; I'm conceding that and I'm making that very clear—but the government is going to be introducing amendments today that weren't part of their package that they had ready for yesterday—to their credit—that aren't going to be available, for instance, amongst others, to blind people, because they're not going to be available in a format such that blind people can read and comprehend them. And that is just so sad. It's tragic and it's shameful.

Again, it's not as if it should be exclusive to this committee. No blind person should have to give notice or make an appointment to come to Queen's Park so that arrangements can be made for some sort of opportunity for them to read material. No deaf person should ever have to make an appointment to come to Queen's Park so that arrangements can be made so they can listen to the proceedings here. Of all the places to which access should be guaranteed, this is it, it seems to me: the people's place, their Parliament. And again, the reason why the Braille is not going to be available is because of the time allocation motion. I don't criticize the staff. The staff with the Ministry of AG who were parties to the preparation of these, as I understand it, and I believe the information, moved promptly to get it translated into Braille. Of course, it wasn't the case last week when Mr. Rae wanted a copy of the materials submitted by the Attorney General.

I want to thank Sibylle Filion, who's legislative counsel, for an incredible amount of work in putting together the amendments that we'll be presenting. Again, she did that in short order and worked, I'm sure, late into her night doing that.

1010

I want to thank the people who care about human rights in the province of Ontario. Mr. Zimmer is here with an impressive entourage. Neither Ms. Elliott nor I have one, but that's okay. We're not alone; we've got the people of Ontario with us. That's 13 million. I believe that.

This is not the end of the story for me and the New Democrats. We believe that there's an important, critical role for a public prosecutor. I use that phrase because it best describes, in my view, in a way that people understand, the role that an adequately resourced and staffed Human Rights Commission performs in the prosecution of human rights complaints.

I apologize, especially to hard-working front-line staff at the Human Rights Commission, their managers and, indeed, previous commissioners, because they have been slandered, defamed and libelled during the course of these hearings. Notwithstanding all-party support in this committee of a motion to invite those staff here so that they could respond to some of the outrageous statements that were made about them—not about the underfunding, but that were made about them—they've been denied the opportunity to come here and respond to scurrilous insinuations and statements.

I appreciate this opportunity to make these preliminary comments, Chair.

**The Chair:** Ms. Elliott?

**Mrs. Christine Elliott (Whitby–Ajax):** Before we get started on the clause-by-clause review of Bill 107, I would just like to state for the record—although I don't think there's any doubt about it—my profound disagreement with the bill both in terms of how it has been handled procedurally and its substantive content.

In my view, with respect to the way it has been handled procedurally, I find the McGuinty muzzle motion to be offensive in the lack of respect that it has shown not only to the members of the committee but, most particularly, to all of the people who, in good faith, relied upon the government to be true to their word and to allow them to present and to make their views known with respect to Bill 107. The fact that that was not honoured I think is just a profound betrayal of all of those people.

With respect to the substantive content: Again, I don't agree with the model that has been established by Bill 107. I think there could have been something that could have been done. Perhaps a compromise could have been reached, but there's no point in even talking about that now because that has all been lost. It really is—and one presenter has indicated—a disaster waiting to happen. I agree. However, in the interest of hopefully making it somewhat less so, I have, on behalf of the Progressive Conservative Party, also filed some amendments for consideration by this committee in the hope and on behalf of those people who are going to have to continue with this, again, not because I agree with the bill—and I am going to be voting against it—but only in the interest of helping out to whatever degree the bill can be helped. So I think that's important to state, that I do not support this bill. I am only presenting these amendments so that hopefully there can be some changes that will be somewhat helpful. But at the end of the day, I have profound disagreement with how this bill has been proceeded with. I think that's all.

**The Chair:** Any further comments?

**Mr. Kormos:** Yes. I would be remiss if I didn't thank my own staff and the NDP research staff as well as the Ministry of the Attorney General staff, who have been as helpful as they can be in view of the circumstances. That has been a little, bright light in an otherwise gloomy exercise and process.

**The Chair:** If there are no further comments, we'll recess for five minutes.

*The committee recessed from 1015 to 1040.*

**The Chair:** The committee is called back to order. We'll start with the first NDP motion, A1. I believe that all parties have it.

**Mr. Kormos:** I move that the bill be amended by adding the following section:

“0.1 Part I of the Human Rights Code is amended by adding the following section:

“Right to hearing

“8.1 Every person who files an application with the tribunal under this act has a right to a hearing on the

merits of the application to be held within one year of the date of the filing of the application.”

Of course, this motion is not in order. Therefore, I seek unanimous consent for it to be deemed in order so that it can be voted upon.

**The Chair:** The motion is not out of order, so we're going to have to proceed. Is there any debate?

**Mr. Kormos:** Yes. The government talked a big game about expediting applications by victims of human rights discrimination pursuant to the code by virtue of the passage of this bill. This gives effect to that by guaranteeing that there will be in fact a hearing on the merits within one year. We heard a whole lot of vilification of the existing commission and the lengthy delays before it now. The rationale for this bill was that it would overcome the delays. This puts it in writing.

A recorded vote, please.

**The Chair:** All those in favour?

### Ayes

Elliott, Kormos.

### Nays

Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** That's lost.

Next is a PC motion, B1. Ms. Elliott.

**Mrs. Elliott:** I move that the bill be amended by adding the following section:

“0.1 The Human Rights Code is amended by adding the following section:

“Applicant's right to publicly funded full, effective legal counsel

“9.1(1) Everyone who makes an application with the tribunal in accordance with this act, or who has a genuine intention to make an application has the right throughout the application and at all related proceedings to full, effective legal support and representation in the form of independent legal counsel at public expense.

“No eligibility criteria

“(2) The right referred to in subsection (1) shall not be subject to any means test or other qualification or eligibility criteria based on the applicant's or potential applicant's financial resources.

“Application to tribunal

“(3) Notwithstanding any other provision of this act, an applicant or potential applicant may apply ex parte to the tribunal for an order requiring the Attorney General to pay for any legal services provided pursuant to this provision within a reasonable time.”

1050

This has been moved in order to—

**The Chair:** Mrs. Elliott, I've been advised that this motion is out of order, as it requires—

**Mr. Kormos:** On a point of order, Mr. Chair: I seek unanimous consent for this motion to be deemed in order so that it can be voted upon.

**Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I want to hear why the Chair thinks it's out of order.

**The Chair:** This motion can only be moved by a minister, so this is out of order. The motion, in 9.1, would require legal counsel at public expense. That's the reason, I'm being told, that it's out of order. So this motion is out of order.

**Mrs. Elliott:** I don't understand. Can you explain that to me?

**Mr. Kormos:** On a point of order, Mr. Chair: The bill itself and the government's amendments, which are included in the amendment package, talk about the funding of a legal services centre. We may have to wait until that motion is moved and passed by the government, and this may then have to be an amendment to that motion. So we can do it the easy way or the hard way. I'd suggest that the easy way is for it to be deemed in order; otherwise it'll simply be moved after the government's motion to establish this legal support centre.

**The Chair:** Thank you, Mr. Kormos and Ms. Elliott.

I'm going to read from standing order 56: “Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown.” So that's the reason this motion is out of order.

We're going to move on. There are no more motions in section 0.1. Is there any further debate on section 0.1?

**Mr. Kormos:** There is no section 0.1.

*Interjection.*

**The Chair:** Right. Okay, we'll move on to section 2.

*Interjection.*

**The Chair:** Is there any debate on section 1?

**Mr. Kormos:** This is critical. This is the beginning of the abolition of the Human Rights Commission as we know it as a public advocate for human rights. I'm opposing it and I will be calling for a recorded vote.

**The Chair:** All those in favour?

Opposed?

### Nays

Elliott, Kormos.

**The Chair:** That's lost.

We're moving on to section 2: government motion 1.

**Mr. David Zimmer (Willowdale):** I move that clause 14(3)(b) of the act, as set out in section 2 of the bill, be amended by striking out “specified in the approval” and substituting “specified in the designation.”

**The Chair:** Any debate?

**Mr. Kormos:** I should indicate that the ministry has been very considerate in giving us explanatory notes for its various amendments. There isn't a commentary with respect to this amendment—if you could very briefly give us an explanation for it. The government moved its amendment to section 2, and we're talking about that

amendment now. I'm asking for an explanation for the amendment, sir.

**Mr. Zimmer:** Mr. Chair, I'm going to move for a five-minute recess.

**Mr. Kormos:** Chair, that's not an appropriate motion. We've got a time allocation motion here. This committee is required to perform its work. The government forced that time allocation motion on us. Let's proceed with our work in accordance with that time allocation motion.

**The Chair:** We'll be having—

*Interjections.*

**The Chair:** Okay. Do we have agreement for a five-minute recess?

**Mr. Kormos:** No.

**The Chair:** So we'll have a vote. All those in favour?

**Mr. Kormos:** No, no. A motion to recess is not in order. We've got a time allocation motion that requires us to sit and do it clause-by-clause in a very restricted period of time.

**The Chair:** That's in order. All those in favour?

**Mr. Kormos:** A recorded vote.

#### Ayes

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** We'll have a five-minute recess.

*The committee recessed from 1055 to 1103.*

**The Chair:** The committee is called back to order. I believe Mr. Zimmer had the floor when we recessed.

**Mr. Zimmer:** We were on government motion number 1. I read that in and I moved it.

**The Chair:** Yes. All those in favour?

**Mr. Kormos:** No, no, Chair.

**The Chair:** Any debate?

**Mr. Kormos:** We've got to debate these things before we call for a vote.

**The Chair:** Yes, Mr. Kormos?

**Mr. Kormos:** Once again, I appreciate the Ministry of AG's co-operation in giving us a summary of the sections of the bill. Unfortunately, most of the amendments that it's moving do not have commentary. This helps expedite things. I needed an explanation for this particular amendment, because it eliminates "approval" and substitutes "designation." Just a brief explanation. It probably isn't a contentious amendment.

**Mr. Zimmer:** I'm going to have one of the ministry staff—

**Mr. Kormos:** Please. Thank you.

**Ms. Juliet Robin:** The change is intended to make it consistent with the previous paragraphs that refer to "designation."

**Mr. Kormos:** Previous paragraphs—designation of a program? Can you refer me to the part that the consistency is acquired with? That's a poor sentence on my part.

**Ms. Robin:** The bill provides that the commission makes a designation. In Bill 107, it referred to an approval. The motion to amend is to make it consistent with the commission making a designation.

**Mr. Kormos:** Okay. Thank you kindly. That's not contentious, Chair.

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? Carried.

Government motion number 2.

**Mr. Zimmer:** I move that subsections 14(4) and (5) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"Inquiries initiated by commission

"(4) The commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1).

"End of inquiry

"(5) At the conclusion of an inquiry under subsection (4), the commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1)."

**Mr. Kormos:** Again, I have to ask—I can't see the difference between subsection (5) as contained in the bill and subsection (5) as amended. Can you help me with that? Am I overlooking something here?

**Ms. Robin:** The amendment replaces the word "review" with the word "inquiry" in both subsection (4) and subsection (5).

**Mr. Kormos:** Okay. And what's the purpose in distinguishing between "review" and "inquiry"?

**Ms. Robin:** It's to be consistent with the commission's inquiry powers that are under the code.

**Mr. Kormos:** That's fair enough.

**The Chair:** Thank you.

All those in favour? That's carried.

Government motion number 3.

**Mr. Zimmer:** I move that subsection 14(6) of the act, as set out in section 2 of the bill, be amended by striking out "subsection (2) or (5)" and substituting "subsection (3) or (5)."

**The Chair:** Mr. Zimmer, I'm sorry. I'm going to have to interrupt.

*Interjection.*

**The Chair:** The next motion is 2a. It's an NDP motion.

**Mr. Kormos:** It's unnumbered.

**The Clerk of the Committee (Ms. Anne Stokes):** It's unnumbered. Section 2 of the bill, section 14 of the act.

**Mr. Kormos:** However, in terms of rational ordering, if the government is moving its government motion number 3, which also amends section 2 of the bill, and my motion is deleting section 2, it might be smarter—I would ask your advice—to put the government motion first and then my motion subsequent to that.

**The Chair:** That's fine.

**Mr. Kormos:** It would make more sense.

**The Chair:** Mr. Zimmer, you may continue with government motion number 3.

**Mr. Zimmer:** I've read it.

**The Chair:** You've read it, yes. Any debate?

1110

**Mr. Kormos:** Chair, one of the problems is because of the huge volume and the fact that not everybody has had a chance to review these thoroughly, and the clerks are certainly at a disadvantage because they've had this thrust upon them.

**The Chair:** Thank you, Mr. Kormos. Any further debate?

**Mr. Kormos:** Yes. Once again, please, Mr. Zimmer or your staff, just a brief explanation.

**Ms. Robin:** It's to correct a drafting error in Bill 107 because the designation is actually made in subsection (3), not subsection (2).

**Mr. Kormos:** Errors happen.

**The Chair:** All those in favour? It's carried.

Government motion number 4.

**Mr. Zimmer:** I move that section 14 of the act, as amended by section 2 of the bill, be amended by adding the following subsection:

"Renewal of designation

"(6.1) If an application for renewal of a designation of a program as a special program is made to the commission before its expiry under subsection (6), the commission may,

"(a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or

"(b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1)."

**The Chair:** Any debate? Seeing none, all those in favour? It's carried.

Government motion 5.

**Mr. Zimmer:** I move that subsection 14(7) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"Effect of designation, etc.

"(7) In a proceeding,

"(a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and

"(b) evidence that the commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1)."

**The Chair:** Any debate? Seeing none, all those in favour? It's carried.

Now we are at the NDP motion.

**Mr. Kormos:** I decline to move it.

**The Chair:** That's fine. That's withdrawn.

Any further debate on section 2? Oh, my mistake. We're still in section 2, so government motion number 6.

**Mr. Zimmer:** I move that section 14 of the act, as amended by section 2 of the bill, be amended by adding the following subsection:

"Tribunal finding

"(9) For the purposes of a proceeding before the tribunal, the tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the commission under this section, subject to clause (7)(b)."

**The Chair:** Any debate? It's carried.

Shall section 2, as amended, carry?

**Mr. Kormos:** One moment; we've got to debate it.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** New Democrats will be opposing section 2, as amended. This, again, is the restructuring, if you will, of the commission, and the restriction of its role to a very modest function, and it will be modest, because the funding of even that broader educational and investigative role is dependent upon funding. New Democrats are voting against section 2, as amended.

**The Chair:** Thank you, Mr. Kormos. Any further debate?

**Mr. Kormos:** A recorded vote, please.

#### Ayes

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** Section 2 is carried.

Is there any debate on sections 3 and 4?

**Mr. Kormos:** No debate on this.

**The Chair:** No debate? Shall sections 3 and 4 carry? Carried.

Section 5, government motion 7.

**Mr. Zimmer:** I move that section 27 of the act, as set out in section 5 of the bill, be amended by adding the following subsections:

"Appointment

"(2.1) Every person appointed to the commission shall have knowledge, experience or training with respect to human rights law and issues.

"Criteria

"(2.2) In the appointment of persons to the commission under subsection (2), the importance of reflecting, in the composition of the commission as a whole, the diversity of Ontario's population shall be recognized."

**The Chair:** Thank you, Mr. Zimmer. I apologize, but we should have gone to NDP motion 6A.

**Mr. Kormos:** But my motion changes subsection 27(2); yours adds subsection (2.1). Depending upon whether the government motion succeeds, with respect, I may not even move mine.

**The Chair:** Would you like to postpone that?

**Mr. Kormos:** Yes, I'll defer it until after we consider this. The government motion that the commission reflect diversity is valuable and creates a context in which my motion becomes more relevant. I'm going to support this motion on the part of the government. I want to make it clear that New Democrats support government motion 7, and I expect you'll show the same courtesy when it comes to NDP motion 6A.

**The Chair:** Any further debate? It's carried.

**Mr. Kormos:** Chair, may I move my motion now? It's been identified as 6A.

**The Chair:** Go ahead, Mr. Kormos.

**Mr. Kormos:** I move that subsection 27(2) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"Composition

"(2) The commission shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council, on the recommendation of the commission appointment advisory committee."

Let me speak to that very briefly. I'm pleased to see the government understand, I think somewhat naturally, the need for the commission to reflect the diversity of Ontario's population. I understand as well that appointments by a Lieutenant Governor in Council are a means by which people are appointed to these bodies. (1) The NDP motion requires this commission to consist of at least seven people, (2) on the recommendation of the commission appointment advisory committee. The government recently in Bill 14—and Mr. Zimmer stewarded it through the Legislature—attempted to enhance the justice of the peace appointment process, to depoliticize it. My concern is that at the end of the day, it still allows for political hacks to be appointed as justices of the peace based on partisan considerations.

1120

But this amendment requires Lieutenant-Governor-in-Council appointments—because what's the Lieutenant Governor in Council? That's the cabinet, right? That's where the Attorney General basically says, "These are my picks." The recommendation of the commission appointment advisory committee is an important function to determine that there indeed be some safeguards. Is partisanship going to happen? I mean, let's face it—

**The Chair:** Mr. Kormos, I've been advised that this motion should be deferred. There has to be the appointment of an advisory committee, and that's not done right now, as I'm told. There has to be an advisory committee established. Can we postpone this until later and go on to the government—

**Mr. Kormos:** I hear you. I suggest to you that implicit in the motion is the existence and the creation of a commission appointment advisory committee. But I'm in your hands.

**The Chair:** Thank you, Mr. Kormos. I think it would be better to defer it. We're on to government motion number 8.

**Mr. Zimmer:** I move that subsection 27(7) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"Employees

"(7) The commission may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under the Public Service Act.

"Evidence obtained in performance of duties

"(7.1) A member of the commission shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the performance of duties under this act.

"Same, employees

"(7.2) An employee of the commission shall not be required to give testimony in a civil suit or any proceeding other than a proceeding under this act as to information obtained in the performance of duties under this act."

**The Chair:** Any debate? Seeing none, shall government motion number 8 carry? Carried.

Government motion number 9.

**Mr. Zimmer:** I move that subsection 27(8) of the act, as set out in section 5 of the bill, be amended by striking out "to any other member of the commission" and substituting "to any member of the Anti-Racism Secretariat, the Disability Rights Secretariat or an advisory group or to any other member of the commission."

**The Chair:** Any debate? Seeing none, that's carried.

Now government motion number 10.

**Mr. Zimmer:** I move that section 27 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Divisions

"(9) The commission may authorize any function of the commission to be performed by a division of the commission composed of at least three members of the commission."

**The Chair:** Any debate? It's carried.

Does at least one member of each of the parties have a new, full package? Do you have a full package, Mr. Zimmer?

**Mr. McMeekin:** Does the whole package include those that came in this morning?

**The Chair:** Yes.

**Mr. Kormos:** The NDP amendments that came in this morning and the government amendments that came in this morning—oh, and the Conservative ones. Okay.

**The Chair:** Mr. Kormos, motion 10A.

**Mr. Kormos:** That's interesting. I need your advice and counsel. I was advised by the Chair to defer—and I respect that—motion 6A. Here I'm creating a new section, 27.1, and in 6A purported to amend section 27, as compared to 27.1. My amendment in 6A was anticipatory, of course, of the amendment that I'm moving in 10A. I suggested that, by virtue of reference to the Commission Appointments Advisory Committee, there would have to be a Commission Appointments Advisory Committee. You understand what I'm saying, sir? I'm in your hands. I'm then put into the difficulty of not being able to move an amendment—because you're going to be calling for debate and a vote on section 5, as amended. Am I

permitted then, by virtue of—because I'm still amending section 5. I want to just make this clear. So I'm not going to be barred. You're not going to tell me—this isn't a sucker shot, right? You're not going to lure me, trick me into—

**Mr. McMeekin:** She doesn't lure you.

**Mr. Kormos:** No, I'm talking to Mr. Dhillon, the Chair. You're not tricking me, are you? All right.

**Mr. McMeekin:** On a point of order, Chair: Can I assume that the new package we just had handed out now contains all the amendments from all parties?

**The Clerk of the Committee:** I have one more. We haven't had a chance to copy it.

**Mr. McMeekin:** I can do away with the previous package?

**The Clerk of the Committee:** The previous package can be disposed of.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** I move that the act, as amended by section 5 of the bill, be further amended by adding the following section:

"Commission Appointments Advisory Committee

"27.1(1) A committee known as the Commission Appointments Advisory Committee in English and as Comité consultatif sur les nominations à la commission in French is established.

"Composition

"(2) The committee is composed of,

"(a) two commissioners, selected by the commissioners;

"(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents' Association;

"(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

"Term of office

"(3) The members hold office for three-year terms and may be reappointed.

"Chair

"(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

"Function

"(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the commission.

"Manner of operating

"(6) The committee shall perform its function in the following manner:

"1. When a vacancy in the commission occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

"2. For every commission vacancy with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked

list of at least two candidates whom it recommends, with brief supporting reasons.

"3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in commission appointments.

"4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

"Rejection of list

"(7) The Lieutenant Governor in Council may reject the committee's recommendations and require it to provide a fresh list.

"Annual report

"(8) The committee shall submit to the Attorney General an annual report of its activities.

"Tabling

"(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly."

If I may, very briefly, Chair: I think it's a pretty substantial amendment, which is also self-explanatory, and it's perhaps a breath of fresh air because it makes sure that candidates for the commission undergo a screening process; it ensures that there is commission participation in the selection, and that's always a valuable thing because they bring the commission culture to the screening process; it ensures that there are lawyers there from the three primary bodies advocating for and representing lawyers in the province to provide a legal perspective; and it also ensures that there is all-party participation in the selection of the advisory committee. What a novel proposition. What a democratic proposal. What a unique way of instilling public confidence in a commission that may have had the confidence of the public in it eroded to some extent by this very bill. I'm asking for support for this motion.

1130

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Ramal, Van Bommel, Zimmer.

**The Chair:** That's lost.

We should go back to 6A. Mr. Zimmer has withdrawn—

**Mr. Kormos:** I decline to move motion 6A. Here we go: the opposition parties co-operate, and what does the government respond?

**The Chair:** 10B: NDP motion?

**Mr. Kormos:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by striking out “promote the elimination of systemic discriminatory practices” in the portion before clause (a) and substituting “promote the elimination of discriminatory practices.”

This responds to the point made by participant after participant that you can’t isolate individual discrimination from systemic discrimination, that the two are inherently integrated, that you can’t somehow cut the world in half in terms of victims of discrimination. I appreciate that it may be offensive to the government because it speaks to the whole public nature of this as compared to the private nature. But discrimination isn’t just a private thing. It’s a very public thing. And discrimination doesn’t just involve the person discriminated against; it involves the discriminators and a societal structure and systems that permit discrimination to take place.

This is a very important amendment in terms of understanding that you can’t isolate discrimination against the person versus systemic discrimination. I’m asking for all-party support.

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

Government motion number 11.

**Mr. Zimmer:** I move that the portion of section 29 before clause (a), as set out in section 5 of the bill, be struck out and the following substituted:

“Functions of commission

“29 The functions of the commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the commission’s duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,”

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 12.

**Mr. Zimmer:** I move that subclause 29(b)(i) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(i) promote awareness and understanding of, respect for and compliance with this act, and”.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That’s carried.

Government motion number 13.

**Mr. Zimmer:** I move that clause 29(c) of the act, as set out in section 5 of the bill, be amended by striking out “research into discriminatory practices that infringe rights under part I” and substituting “research into discriminatory practices”.

**The Chair:** Any debate? All those in favour? That’s carried.

Government motion number 14.

**Mr. Zimmer:** I move that clause 29(e) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and coordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;”

**Mr. Kormos:** I understand what the government is trying to do with this amendment in the context of funding, the existing commission or shell of that commission that will exist after the bill. My first response to this proposal—and I’m talking about funding: Caledonia.

Your section—I’m going to support it—requires the commission to become actively involved in Caledonia, a horrible dispute that has scarred that community and remains unresolved after the expenditure, as you folks well know, of millions and millions and millions of dollars.

“The functions of the commission are to”—the commission is required to do these things. This expands the role of the commission in a way that I agree with, but what are the realities going to be around funding? The commission is underfunded today, sir.

I’m going to support this amendment, because once this bill is proclaimed, we’re going to be rising in the House in question period saying that this government had better fund this commission so it can perform this very role, for instance, with respect to the tragic, unresolved conflict in Caledonia.

**The Chair:** Any further debate? Seeing none, all those in favour? That’s carried.

Government motion number 15.

**Mr. Zimmer:** I move that clause 29(g) of the act, as set out in section 5 of the bill, be amended by striking out “to approve” at the beginning and substituting “to designate”.

**The Chair:** Any debate? Seeing none, all those in favour? That’s carried.

Government motion number 16.

**Mr. Zimmer:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(g.1) to approve policies under section 29.1;”

**The Chair:** Mr. Kormos?

**Mr. Kormos:** We don’t have a 29.1 yet. With respect, Mr. Zimmer, this should be deferred until after you move your motion creating 29.1.

**The Chair:** This will be deferred.

NDP motion 16A: Mr. Kormos.

**Mr. Kormos:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(h.1) to monitor compliance with orders made by the tribunal under part IV;”

That’s self-explanatory. It makes it clear that the commission has that as a specific obligation.

**The Chair:** Any debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** It’s lost.

Government motion number 17.

**Mr. Zimmer:** I move that clause 29(i) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(i) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;”

**The Chair:** Any debate? Mr. Kormos.

**Mr. Kormos:** One of the interesting things is that the government was heralding, as if somehow it was new, an annual report by the commission/tribunal. The Human Rights Commission produces an annual report now in any event. Remember when Mr. Bryant was here—do you remember that, Mr. Zimmer? Mr. Bryant was here and you had the trumpets blaring and you had the cheerleaders with the pom-poms about the proposed amendments. He was talking about this, somehow implying that for the first time the commission will be making an annual report. It does now. “To report to the people of Ontario on the state of human rights in Ontario and on its affairs.” Do you know what? Victims of discrimination wanted to report to this committee their victimization in terms of human rights, and your closure motion slammed the door in their face.

I’ll support the amendment.

1140

**The Chair:** Any further debate? Seeing none, all those in favour? Carried.

Government motion number 18.

**Mr. Zimmer:** I move that part III of the act, as set out in section 5 of the bill, be amended by adding the following section:

“Commission documents

“29.1 The commission may approve policies prepared and published by the commission to provide guidance in the application of parts I and II.”

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 19.

**Mr. Zimmer:** We go back to 16 now.

**The Chair:** Yes. Government motion number 16.

**Mr. Zimmer:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(g.1) to approve policies under section 29.1;”

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? Carried.

We’re on to government motion number 19.

**Mr. Zimmer:** I move that part III of the act, as set out in section 5 of the bill, be amended by adding the following sections:

“Inquiries

“29.2(1) The commission may conduct an inquiry under this section for the purpose of carrying out its functions under this act if the commission believes it is in the public interest to do so.

“Conduct of inquiry

“(2) An inquiry may be conducted under this section by any person who is appointed by the commission to carry out inquiries under this section.

“Production of certificate

“(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request.

“Entry

“(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry.

“Time of entry

“(5) The power to enter a place under subsection (4) may be exercised only during the place’s regular business hours or, if it does not have regular business hours, during daylight hours.

“Dwellings

“(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant.

“Powers on inquiry

“(7) A person conducting an inquiry may,  
“(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

“(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

“(c) question a person on matters that are or may be relevant to the inquiry, subject to the person’s right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

“(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

“(e) take measurements or record by any means the physical dimensions of a place;

“(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

“(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test.

“Written demand

“(8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required.

“Assistance

“(9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry.

“Use of force prohibited

“(10) A person conducting an inquiry shall not use force to enter and search premises under this section.

“Obligation to produce and assist

“(11) A person who is requested to produce a document or thing under clause (7)(a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form.

“Return of removed things

“(12) A person conducting an inquiry who removes any document or thing from a place under clause (7)(b) shall,

“(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

“(b) return it to the person from whom it was removed within a reasonable time.

“Admissibility of copies

“(13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

“Obstruction

“(14) No person shall obstruct or interfere with a person conducting an inquiry under this section.

“Search warrant

“29.3(1) The commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

“(a) a person conducting an inquiry under section 29.2 has been denied entry to any place or asked to leave a place before concluding a search;

“(b) a person conducting an inquiry under section 29.2 made a request for documents or things and the request was refused; or

“(c) an inquiry under section 29.2 is otherwise obstructed or prevented.

“Same

“(2) Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is

necessary for the purposes of carrying out the inquiry under section 29.2.

“Powers

“(3) A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,

“(a) to enter any place specified in the warrant, including a dwelling; and

“(b) to do any of the things specified in the warrant.

“Conditions on search warrant

“(4) A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

“Time of execution

“(5) An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant.

“Expiry of warrant

“(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant.

“Use of force

“(7) The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant.

“Obstruction prohibited

“(8) No person shall obstruct or hinder a person in the execution of a warrant issued under this section.

“Application

“(9) Subsections 29.2(11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section.

“Evidence used in tribunal proceedings

“29.4 Despite any other act, evidence obtained on an inquiry under section 29.2 or 29.3 may be received into evidence in a proceeding before the tribunal.”

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** The problem I see with this amendment—and my concerns have been reflected by many witnesses—is that it assumes you can neatly draw the distinction between a systemic and an individual complaint. While it’s very detailed in terms of the conduct of the inquiry, if you look at the initial statement, “The commission may conduct an inquiry under this section ... if the commission believes it is in the public interest to do so”—how will the commission know if it is in the public interest to do so if it doesn’t have any knowledge of what the individual complaints are? We’ve heard that there’ll be some informal kind of system whereby they’ll receive reports and so on, but it still assumes that you can neatly separate them, and we’ve heard from many, many witnesses that that can’t happen. That’s my biggest concern with this amendment.

**The Chair:** Mr. Kormos?

1150

**Mr. Kormos:** Ms. Elliott's point is well made. That's the whole point, quite frankly. It's in the public interest for the commission to investigate any valid complaint of discrimination under the Human Rights Code. That's the point we've been trying to make and, more importantly, the point a whole lot of folks across the province have been trying to make. This amendment illustrates the complexity of an investigative role that, in the private system you propose, can never be performed by the complainant privately, notwithstanding the best-made plans of mice and men, as in a legal support clinic.

Let me speak to a couple of other parts of the amendment. I'm sorry, but—well, I shouldn't apologize. I find warrantless searches offensive and contrary to a long-held tradition, whether they're of dwellings—because I can see that you require warrants for searching dwellings—or of any other place. In situations like the licensed sector, there is implicit in the licensing that an inspector will have the right of entry, right? I regard human rights violations to be very serious matters. I also regard possession of stolen goods, possession of illegal firearms, murder—name the Criminal Code offence you want—to be very serious crimes too. Yet we require police officers to obtain warrants to search places in each and every one of those circumstances. I will not support warrantless searches. It's simply unjustifiable.

That takes us to page 3 of your amendment. This morning I was in here—because this isn't one of the amendments you produced this morning; this is one you had delivered yesterday. Granted, it was early in the morning, but with respect to 29.3, under “Search warrant,” I wrote “stupid.” Look what you've done. Read 29.3, with respect. You can get a warrant if a person has been denied entry to any place or asked to leave the place, you can get a warrant if a person made a request for documents or things and the request was refused, or you can get a warrant if an inquiry was obstructed. Well, have you never heard of paper shredders? Do you not see the scenario? The commission inspector goes knocking on the door: “Mr. Dhillon, I want to see your employment records with respect to employee A, B or C whose human rights complaint we are investigating.” You tell the inspector to go pound salt, then he goes to a JP to get a warrant. Just what do you think guilty people do with evidence if they have been tipped off to the fact that somebody wants it? There's an absurdity here, isn't there, Mr. Zimmer? Why would we permit people to get search warrants only after they've tipped off the subject of a human rights investigation that they're the subject of a human rights investigation? That's nuts. If only, when I practised criminal law, that were the standard. All of my clients would have been innocent. Honest, I tried, Mr. Zimmer. This morning, I read the amendment over and over and over again, and I tried to be helpful. As you know, I don't want to be unduly critical.

*Laughter.*

**Mr. Kormos:** No, I'm serious. I looked for some sort of rationale for this type of standard for obtaining a

search warrant. I get it: “Knock, knock, knock. We think this is a marijuana grow-opposition and that you guys are bikers and that you've probably got a whole lot of automatic rifles in here too, along with some Bryant pit bulls. Oh, but you're not going to let us in? Well, we'll be back with a warrant. Just watch.” Come on. That's not how you conduct serious investigations, sir, and these are serious matters.

I find warrantless searches inherently offensive, unless we're talking about licensed bodies that, by virtue of being licensed, are subject to inspections, for instance, by Ministry of Labour inspectors etc. But I find the irrationality of 29.3 to be just—maybe your experience with bad guys is better than mine. Maybe you know bad guys who do co-operate with inspectors, or people who discriminate who do co-operate with commission investigators. I've never met that person yet. Maybe I'm just travelling in the wrong circles.

With respect, I would be pleased, Chair, to consent to this motion being returned with that portion around 29.3—I know I'm going to lose the warrantless search argument. But on 29.3, that you've got to give notice to the person about whom you're going to get a search warrant before you can get the search warrant, is just too absurd. I'll consent to this motion being returned if you want, to eliminate the notice portion to a suspected offender of the Human Rights Code. I'd be pleased to do that.

**The Chair:** Any further debate? Seeing none, all those in favour?

**Mr. Kormos:** Recorded vote.

#### Ayes

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** It's carried.

**Mr. Kormos:** I can hear the hum of paper shredders already.

**The Chair:** NDP motion, 19A.

**Mr. Kormos:** I move that subsections 30(2) and (3) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“Composition

“(2) The Anti-Racism Secretariat shall be composed of such persons as may be appointed by the Lieutenant Governor in Council, on the recommendation of the Anti-Racism Secretariat Appointments Advisory Committee.”

Here I'm being presumptuous. I suspect this should be deferred unless and until we get to the Anti-Racism Secretariat Appointments Advisory Committee. Am I okay on that, Ms. Stokes?

**The Chair:** That's stood down. We'll move to government motion 20.

**Mr. Kormos:** Thank you. I was jumping the gun.

**Mr. Zimmer:** I move that subsection 30(2) of the act, as set out in section 5 of the bill, be amended by striking out “by the minister” and substituting “by the Lieutenant Governor in Council”.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That’s carried.

Government motion 21.

**Mr. Zimmer:** I move that subsection 30(3) of the act, as set out in section 5 of the bill, be amended by striking out “The minister” at the beginning and substituting “The Lieutenant Governor in Council”.

**Mr. Kormos:** As with the previous one, please, folks, this doesn’t in any way sanitize the process or improve it. We’re still talking about political calls here. The Lieutenant Governor in Council is not Mr. Bartleman—for whom all of us have the highest regard—making decisions. The Lieutenant Governor in Council is the cabinet. That’s the long and short of it.

**The Chair:** Any further debate? All those in favour? Opposed? It’s carried.

NDP motion 21A.

**Mr. Kormos:** I move that section 30 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

“Staff

“(3.1) The Anti-Racism Secretariat may employ such persons as is necessary to the efficient operation of the secretariat and the salary, remuneration, terms and conditions of employments shall be established by the Lieutenant Governor in Council.”

1200

Very briefly, New Democrats have serious concerns about burying an Anti-Racism Secretariat in this new shell of a commission. We don’t think that puts anti-racism on a very elevated level in terms of prioritization, never mind funding. That secretariat is going to have to share what we feel will be an inadequate envelope when it comes to funding; similarly with the disability secretariat. We have always believed that. There should be a restoration in Ontario of the Anti-Racism Secretariat. We have some serious problems going on with respect to racism. End of story. The area of discrimination, which includes a number of areas of discrimination within the scope of the commission—racism in and of itself warrants a stand-alone secretariat, not a virtual secretariat buried in the commission. This, however, attempts to ensure that the secretariat at least has the capacity to require adequate levels of resources and funding.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Orazietti, McMeekin, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

NDP motion 21B.

**Mr. Kormos:** I move that subsection 30(4) of the act, as set out in section 5 of the bill, be amended by striking out “and” at the end of clause (b), adding “and” at the end of clause (c) and adding the following clause:

“(d) perform the functions assigned to it under this or any other act.”

Again, that very much speaks for itself. I’m calling for a recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Orazietti, McMeekin, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

Government motion 22.

**Mr. Zimmer:** I move that subsection 30(4) of the act, as set out in section 5 of the bill, be amended by,

(a) striking out “make recommendations” in clause (a) and substituting “make recommendations to the commission”; and

(b) striking out “or prescribed by regulation” at the end of clause (c).

**The Chair:** Any debate? Seeing none, all those in favour? That’s carried.

NDP motion 22A.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

“Anti-Racism Secretariat Appointment Advisory Committee

“30.1(1) A committee known as the Anti-Racism Secretariat Appointment Advisory Committee in English and as Comité consultatif sur les nominations au Secrétariat antiracisme in French is established.

“Composition

“(2) The committee is composed of,

“(a) two commissioners, selected by the commissioners;

“(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents’ Association;

“(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

“Term of office

“(3) The members hold office for three-year terms and may be reappointed.

“Chair

“(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

“Function

"(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the Anti-Racism Secretariat.

"Manner of operating

"(6) The committee shall perform its function in the following manner:

"1. When a vacancy in the Anti-Racism Secretariat occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

"2. For every vacancy in the Anti-Racism Secretariat with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

"3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in Anti-Racism Secretariat appointments.

"4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

"Rejection of list

"(7) The Lieutenant Governor in Council may reject the committee's recommendations and require it to provide a fresh list.

"Annual report

"(8) The committee shall submit to the Attorney General an annual report of its activities.

"Tabling

"(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly."

This speaks for itself. It's the parallel of what I proposed with respect to the appointments committee for the commission.

A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** It's lost.

NDP motion 19A.

**Mr. Kormos:** I can indicate clearly that that motion is now moot, a done deal.

**The Chair:** We are now at NDP motion number 22B.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

"Referral of complaints

"30.2 If the commission receives a complaint in which allegations of discrimination based on racism or a related ground are made, the commission may refer the complaint to the Anti-Racism Secretariat.

"Investigation of complaints

"30.3(1) Subject to section 30.4, the Anti-Racism Secretariat shall investigate a complaint and may endeavour to effect a settlement.

"Investigation

"(2) An investigation by the Anti-Racism Secretariat may be made by a member or employee of the secretariat who is authorized by the secretariat for the purpose.

"Powers on investigation

"(3) A person authorized to investigate a complaint may,

"(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

"(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

"(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

"(d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

"Entry into dwellings

"(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

"Denial of entry

"(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the Anti-Racism Secretariat may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

"Refusal to produce

"(6) If a person refuses to comply with a request for production of documents or things, the Anti-Racism Secretariat may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

"Warrant for search

"(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any

such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

“Warrant for entry

“(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

“Execution of warrant

“(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

“Expiration of warrant

“(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

“Obstruction

“(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

“Idem

“(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

“Admissibility of copies

“(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

“Decision to not deal with complaint

“30.4(1) Where it appears to the Anti-Racism Secretariat that,

“(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

“(b) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

“(c) the complaint is not within the jurisdiction of the Anti-Racism Secretariat; or

“(d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Anti-Racism Secretariat is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

“the Anti-Racism Secretariat may, in its discretion, decide to not deal with the complaint.

Very quickly, we’ve tried to parallel the government’s legislation, including avoiding the government saying, “Well, we won’t vote for that because you require warrants to search non-dwellings.” I’ve sacrificed my concern about that to avoid giving the government an excuse to oppose the amendment. We’ve settled a search warrant procedure that doesn’t require notice to the person being searched that you’re going to get a search

warrant. That’s pretty traditional search warrant procedure.

1210

**The Chair:** Mr. Kormos, are you aware that you’re only part way through the motion?

**Mr. Kormos:** Well, that’s all I’m going to read in.

**The Chair:** You won’t be reading any further?

**Mr. Kormos:** That’s all I’m reading in.

**The Chair:** That’s fine. Go ahead.

**Mr. Kormos:** We’ve provided for a stature for the Anti-Racism Secretariat that gives it a function other than being merely a virtual secretariat. We contemplate the development of expertise within the Anti-Racism Secretariat. I think that could serve us well. I’ve already indicated that we don’t agree with your broad proposition, but I put to you that this is a valid way of giving the Anti-Racism Secretariat stature so it’s something other than a name above a door. Those are my comments.

**The Chair:** Any other debate?

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

McMeekin, Oraziatti, Ramal, Zimmer.

**The Chair:** That’s defeated.

**Mr. Kormos:** I’m going to decline to move 22C.

**The Chair:** 22C is withdrawn.

**Mr. Kormos:** No, it hasn’t been withdrawn. I simply have declined to move it. You can only withdraw something after you enter it. It doesn’t exist.

**The Chair:** Thank you, Mr. Kormos.

Government motion number 23.

**Mr. Zimmer:** I move that subsection 31(2) of the act, as set out in section 5 of the bill, be amended by striking out “by the minister” and substituting “by the Lieutenant Governor in Council”.

**The Chair:** Any debate? That’s carried.

Government motion 24.

**Mr. Zimmer:** I move that subsection 31(3) of the act, as set out in section 5 of the bill, be amended by striking out “The minister” at the beginning and substituting “The Lieutenant Governor in Council”.

**The Chair:** That’s carried.

NDP motion?

**Mr. Kormos:** I move that section 31 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

“Staff

“(3.1) The Disability Rights Secretariat may employ such persons as is necessary to the efficient operation of the secretariat and the salary, remuneration, terms and conditions of employments shall be established by the Lieutenant Governor in Council.”

It's the same rationale for that proposal as there was for the parallel proposal on behalf of the Anti-Racism Secretariat. Here's an opportunity for the government to demonstrate that it's flexible. While it may not agree with that proposition when it comes to anti-racism, it certainly does when it comes to disabilities.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Ramal, Zimmer.

**The Chair:** It's defeated.

Government motion number 25.

**Mr. Zimmer:** I move that subsection 31(4) of the act, as set out in section 5 of the bill, be amended by,

(a) striking out "make recommendations" in clause (a) and substituting "make recommendations to the commission"; and

(b) striking out "or prescribed by regulation" at the end of clause (c).

**The Chair:** That's carried.

NDP motion?

**Mr. Kormos:** I move that subsection 31(4) of the act, as set out in section 5 of the bill, be amended by striking out "and" at the end of clause (b), adding "and" at the end of clause (c) and adding the following clause:

"(d) perform the functions assigned to it under this or any other act."

**The Chair:** Any debate? Seeing none—

**Mr. Kormos:** Carried.

**The Chair:** —all those in favour?

**Mr. Kormos:** Say no.

**Mr. Zimmer:** No.

**The Chair:** Opposed? Lost.

NDP motion?

**Mr. Kormos:** Chair, on a point of order: Mr. Zimmer did say no, which then prompted a count. I'm not being critical, but can we get some uniformity? I'm saying "carried" to try to expedite matters here, which is the way, as you know, we vote in the chamber. It's a proper vote. If somebody says no, that means you need a show of hands; it's basically a counted vote, as compared to a recorded vote, which has to be specifically requested. Mr. Zimmer will not miss a vote. Just use whatever method you want.

**Mr. McMeekin:** Mr. Chair, you asked for nay votes, right?

**The Chair:** Yes.

**Mr. Kormos:** But he said no. You see, then you have a counted vote.

**The Chair:** Moving on to NDP motion number 25B.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

"Disability Rights Secretariat Appointment Advisory Committee

"31.0.1(1) A committee known as the Disability Rights Secretariat Appointment Advisory Committee in English and as Comité consultatif sur les nominations au secrétariat aux droits des personnes handicapées in French is established.

"Composition

"(2) The committee is composed of,

"(a) two commissioners, selected by the commissioners;

"(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents' Association;

"(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

"Term of office

"(3) The members hold office for three-year terms and may be reappointed.

"Chair

"(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

"Function

"(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the Disability Rights Secretariat.

"Manner of operating

"(6) The committee shall perform its function in the following manner:

"1. When a vacancy in the Disability Rights Secretariat occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

"2. For every vacancy in the Disability Rights Secretariat with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

"3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in Disability Rights Secretariat appointments.

"4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

"Rejection of list

"(7) The Lieutenant Governor in Council may reject the committee's recommendations and require it to provide a fresh list.

"Annual report

"(8) The committee shall submit to the Attorney General an annual report of its activities.

"Tabling

"(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly."

This is the parallel of previous amendments with respect to the commission and the Anti-Racism Secretariat.

**The Chair:** Thank you, Mr. Kormos.

**Mr. Kormos:** A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 25C.

1220

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following sections to the act:

"Referral of complaints

"31.0.2 If the commission receives a complaint in which allegations of discrimination based on disability are made, the commission may refer the complaint to the Disability Rights Secretariat.

"Investigation of complaints

"31.0.3 (1) Subject to section 31.0.4, the Disability Rights Secretariat shall investigate a complaint and may endeavour to effect a settlement.

"Investigation

"(2) An investigation by the Disability Rights Secretariat may be made by a member or employee of the secretariat who is authorized by the secretariat for the purpose.

"Powers on investigation

"(3) A person authorized to investigate a complaint may,

"(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

"(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

"(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

"(d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

"Entry into dwellings

"(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

"Denial of entry

"(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the disability rights secretariat may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

"Refusal to produce

"(6) If a person refuses to comply with a request for production of documents or things, the Disability Rights Secretariat may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

"Warrant for search

"(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

"Warrant for entry

"(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

"Execution of warrant

"(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

"Expiration of warrant

"(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

"Obstruction

"(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

"Idem

"(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

"Admissibility of copies

"(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same

extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

"Decision to not deal with complaint

"31.0.4(1) Where it appears to the Disability Rights Secretariat that,

"(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

"(b) the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

"(c) the complaint is not within the jurisdiction of the Disability Rights Secretariat; or

"(d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Disability Rights Secretariat is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

"the Disability Rights Secretariat may, in its discretion, decide to not deal with the complaint."

That is the whole amendment.

**The Chair:** Any debate?

**Mr. Kormos:** Again, this is the parallel of the government's own legislation in terms of the commission function. It utilized much of the same language so as not to give the government a reason—a valid reason—to oppose it. It gives the Disability Rights Secretariat a function, where there could be expertise—because if you're going to put the Disability Rights Secretariat and the Anti-Racism Secretariat in the commission, then have them do something. I say have them cultivate and nurture expertise in those two very specific areas of discrimination: discrimination around disabilities and discrimination around racism. Why else would you even have them there in the commission? Make them functional rather than pure lip service. That's what this amendment purports to do.

**The Chair:** Thank you, Mr. Kormos. Any other debate?

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost. Number 25D.

**Mr. Kormos:** I move that section 31.1 of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"Advisory groups

"31.1(1) The chief commissioner may establish such advisory groups as he or she considers appropriate to advise the commission about the elimination of discrimination.

"Appointment

"(2) The chief commissioner shall select persons for appointment to an advisory group based on their training, experience and knowledgeability in the particular subject matter about which the advisory group is to provide advice.

"Remuneration

"(3) A person appointed to an advisory group shall receive such remuneration and allowance for expenses as is specified in the appointment.

"Public consultation

"(4) An advisory group shall consult with the public in such circumstances and manner as may be prescribed by regulation."

I think that's pretty self-explanatory.

**The Chair:** Any debate?

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Government motion number 26.

**Mr. Zimmer:** I move that section 31.2 of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"31.2(1) Every year, the commission shall prepare an annual report on the affairs of the commission that occurred during the 12-month period ending on March 31 of each year.

"Report to Speaker

"(2) The commission shall submit the report to the Speaker of the Assembly no later than on June 30 in each year, who shall cause the report to be laid before the assembly if it is in session or, if not, at the next session.

"Copy to minister

"(3) The commission shall give a copy of the report to the minister at least 30 days before it is submitted to the Speaker under subsection (2).

"Other reports

"31.3 In addition to the annual report, the commission may make any other reports respecting the state of human rights in Ontario and the affairs of the commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate."

**The Chair:** Any debate? Seeing none, it's carried.

Is there any further debate on section 5?

**Mr. Kormos:** Yes. We oppose section 5. Let's understand what section 5 does. Section 5 repeals part III of the Ontario Human Rights Code. It's what guts the commission. I'm going to try to rectify that with my next amendment, if it's in order; I think it is, because it's consequential. Section 5—this is it, this is the critical vote right here and now. It shows what side you're on.

New Democrats will be voting against section 5 for that very reason.

**The Chair:** All those in favour of section 5?

**Mr. Kormos:** A recorded vote.

### Ayes

McMeekin, Oraziotti, Van Bommel, Zimmer.

### Nays

Elliott, Kormos.

**The Chair:** It's carried.

Section 6?

**Mr. Kormos:** What about 26A?

**The Chair:** Yes, creating a section 5.1. Mr. Kormos, 26A.

**Mr. Kormos:** Thank you kindly. You know what I'm going to do? Because my amendment is identical to the amendment of Ms. Elliott, I will decline to move my amendment and let Ms. Elliott read an amendment that is five pages long.

**The Chair:** Thank you, Mr. Kormos.

It's almost 12:30, so we're going to break and meet back here again at 3:30 this afternoon, as I know members have commitments.

*The committee recessed from 1228 to 1540.*

**The Chair:** Welcome back to the committee. We are going to resume clause-by-clause consideration of Bill 107.

I believe we left off at PC motion 26B. We have also distributed an additional PC motion, page 51D. I just want to make sure all parties have that. If that's all in order, we can start with Ms. Elliott, 26B.

**Mrs. Elliott:** I move that the bill be amended by adding the following section:

"5.1 The act is amended by adding the following part:

"Part III.1

"Complaints and investigations by commission

"Complaints

"31.3(1) Where a person believes that a right of the person under this act has been infringed, the person may file with the commission a complaint in a form approved by the commission.

"Same

"(2) The commission may initiate a complaint by itself or at the request of any person.

"Combining of complaints

"(3) Where two or more complaints,

"(a) bring into question a practice of infringement engaged in by the same person; or

"(b) have questions of law or fact in common,

"the commission may combine the complaints and deal with them in the same proceeding.

"Application under part IV

"(4) Nothing in this part affects the right of a person or the commission to make an application under part IV.

"Investigation of complaints

"31.4(1) Subject to section 31.5, the commission shall investigate a complaint and may endeavour to effect a settlement.

"Investigation

"(2) An investigation by the commission may be made by a member or employee of the commission who is authorized by the commission for the purpose.

"Powers on investigation

"(3) A person authorized to investigate a complaint may,

"(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

"(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

"(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

"(d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

"Entry into dwellings

"(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

"Denial of entry

"(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the commission may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

"Refusal to produce

"(6) If a person refuses to comply with a request for production of documents or things, the commission may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

"Warrant for search

"(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

"Warrant for entry

“(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

“Execution of warrant

“(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

“Expiration of warrant

“(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

“Obstruction

“(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

“Same

“(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

“Admissibility of copies

“(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

“Decision to not deal with complaint

“31.5(1) Where it appears to the commission that,

“(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

“(b) the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

“(c) the complaint is not within the jurisdiction of the commission; or

“(d) the facts upon which the complaint is based occurred more than one year before the complaint was filed, unless the commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

“the commission may, in its discretion, decide to not deal with the complaint.

“Notice of decision and reasons

“(2) Where the commission decides to not deal with a complaint, it shall advise the complainant in writing of the decision and the reasons therefor and of the procedure under section 31.8 for having the decision reconsidered.

“Withdrawal of complaint

“31.6 A complainant may withdraw a complaint at any time by giving written notice of the withdrawal to the commission.

“Referred to tribunal

“31.7(1) Where the commission does not effect a settlement of the complaint and it appears to the commission that the procedure is appropriate and the evi-

dence warrants an inquiry, the commission may refer the subject matter of the complaint to the tribunal.

“Mandatory referral to tribunal

“(2) The commission shall refer the subject matter of a complaint to the tribunal if,

“(a) the case depends partly or wholly on an assessment of the credibility of any person, unless the commission has decided not to deal with the complaint under clause 31.5(1)(b); or

“(b) the complainant and any persons complained against consent to having the matter referred to the tribunal.

“Notice of decision not to refer to tribunal

“(3) Where the commission decides to not refer the subject matter of a complaint to the tribunal, it shall advise the complainant and the person complained against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 31.8 for having the decision reconsidered.

“Reconsideration

“31.8(1) Within a period of 15 days of the date of mailing the decision and reasons therefor mentioned in subsection 31.5(2) or 31.7(3), or such longer period as the commission may for special reasons allow, a complainant may request the commission to reconsider its decision by filing an application for reconsideration containing a concise statement of the material facts upon which the application is based.

“Notice of application

“(2) Upon receipt of an application for reconsideration, the commission shall as soon as is practicable notify the person complained against of the application and afford the person an opportunity to submit written evidence and to make written submissions with respect thereto within such time as the commission specifies.

“Three commissioners to reconsider

“(3) Three members of the commission shall review the written evidence and submissions and shall reconsider the decision.

“Member not to be appointed

“(4) A member of the commission reconsidering a decision must not have taken part in any investigation or consideration of the subject matter of the inquiry before the reconsideration.

“Decision

“(5) Every decision of the commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and the person complained against and the decision shall be final.

“Application of part IV

“31.9(1) Subject to subsection (2), part IV, with necessary modifications, applies to a proceeding under this part.

“Commission to represent complainant

“(2) Where the commission refers a complaint to the tribunal under this part, the parties to the proceeding before the tribunal are,

“(a) the commission, which shall have the carriage of the complaint;

“(b) the complainant;

“(c) any person who the commission alleges has infringed the right;

“(d) any person appearing to the tribunal to have infringed the right;

“(e) where the complaint is of alleged conduct constituting harassment under subsection 2(2) or 5(2) or of alleged conduct under section 7, any person who, in the opinion of the tribunal, knew or was in possession of facts from which the person ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.”

Mr. Chair, this amendment has been introduced to deal with the concerns expressed by many people that the commission can't deal with issues in a vacuum. It's important to allow the commission to receive complaints directly so it will have the information it needs in order to initiate investigations into systemic discrimination.

**The Chair:** Thank you very much. Further debate?

**Mr. Kormos:** The amendment introduces or incorporates some of the Quebec model in that it doesn't—and I'm not an advocate of the Quebec model. I believe that the prosecution of human rights complaints is in the public interest and should be done by a commission on behalf of the public. But here is a modest proposal that allows a victim who believes that she or he requires more than what is going to be available to her or him through the support centre, especially in the area of investigation, to call upon the commission to conduct the investigation and the prosecution. That's incredibly important. I invite the parliamentary assistant or his staff to show us where the private complainant is going to be able, for instance, to get search warrants to obtain evidence.

1550

It's obvious. You've got a continuum: You've got people who discriminate inadvertently—and I trust and presume that it's those types of cases among the almost 50% of cases resolved currently by the commission through mediation and other dispute resolution methods—all the way to people who are outright mean-spirited, self-serving discriminators, whether it's with respect to housing and accommodations, with respect to employment etc.

And you've got complainants that will range from the very wealthy, although very rarely, because let's face it, when you pull up in front of Holt Renfrew in the \$600 and you're from Rosedale—I don't spend a lot of time at Holt's, but the doorman rushes out to open the rear door of the Mercedes Benz and welcomes you into the high-priced fragrance section at the front door. Can rich people be victims of discrimination? Of course they can. But by and large, people who are victims of discrimination tend to be at the other end of the scale. They're not going to be hiring their own counsel. They're not going to be hiring their own investigators. This provides an option. It also keeps the commission in the investigation and prosecution business, and I think that's very

important. If the commission is going to deal with systemic discrimination—and this goes back to our argument earlier that you can't isolate individual discrimination from systemic; one is the other and the other is the other. The commission has to stay in that business, and the commission's ability to identify systemic discrimination very much depends upon it being involved in the investigation of individuals' complaints. You notice I didn't say “individual” complaints, I said “individuals”: persons' complaints.

I think this amendment provides a balance within the context of the government proposal and is as good as you're going to get within the government proposal.

**The Chair:** Any further debate?

**Mr. Kormos:** One moment. I'm not wrapping up yet.

I endorse the spirit, the tone and the thrust, the direction of the amendment. As I say, it's not my preference, but it's an effort on the part of the opposition to engage in some compromise. Well, it is. As I indicated at the outset, we're not necessarily in agreement with all the things we're proposing by way of our amendments today, but we understand that there's a community out there that's going to have to live with the results of Bill 107.

Is the next government going to change 107? However much I'd like to say yes, you and I both know that there's strong competition within a government about what gets on the order paper and what gets done during a government's four-year term. So one is going to be hard-pressed to say, “Don't worry, because the next government will automatically change this.” It isn't quite that easy. These things don't happen every day. They don't happen every year.

This quasi-constitutional legislation, as Keith Norton explained yesterday, is not revisited on a regular basis. A series of commissioners have called upon a series of governments to do a series of things. This amendment makes this bill a better bill. I will be supporting it on behalf of New Democrats.

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Next is NDP motion 26C.

**Mr. Kormos:** If I may, should that be deferred until we deal with the creation of a Tribunal Appointment Advisory Committee? Are we in that same scenario, Madam Clerk?

**The Chair:** That will be deferred.

Government motion 27.

**Mr. Zimmer:** I move that subsection 32(1) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“Tribunal

“32(1) The tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l’Ontario in French is continued.

“Composition

“(1.1) The tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (1.2).

“Selection process

“(1.2) The selection process for the appointment of members of the tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

“1. Experience, knowledge or training with respect to human rights law and issues.

“2. Aptitude for impartial adjudication.

“3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the tribunal rules.”

**The Chair:** Any debate?

**Mr. Kormos:** If I may once again, because we don’t have—oh yes, we do: “ensures that the adjudicators of the tribunal have expertise in human rights.” Am I jumping ahead here? No. Thank you.

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 28.

**Mr. Zimmer:** I move that section 32 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Alternate chair

“(4.1) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair.

“Same

“(4.2) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the powers of the chair.”

**The Chair:** Debate? Seeing none, all those in favour? Carried.

Government motion 29.

**Mr. Zimmer:** I move that subsection 32(5) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“Employees

“(5) The tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under the Public Service Act.”

**The Chair:** Debate? Seeing none, all those in favour? Opposed? Carried.

NDP motion 29A.

**Mr. Kormos:** I’m going to decline to move that, sir.

**The Chair:** NDP motion 29B.

**Mr. Kormos:** I move that the act, as amended by section 6, be further amended by adding the following section:

“Tribunal Appointment Advisory Committee

“32.1(1) A committee known as the Tribunal Appointment Advisory Committee in English and as Comité consultatif sur les nominations au Tribunal in French is established.

“Composition

“(2) The committee is composed of,

“(a) two tribunal members, selected by the tribunal members;

“(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents’ Association;

“(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

“Term of office

“(3) The members hold office for three-year terms and may be reappointed.

“Chair

“(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

“Function

“(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the commission.

“Manner of operating

“(6) The committee shall perform its function in the following manner:

“1. When a vacancy occurs in the tribunal and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

“2. For every tribunal vacancy with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

“3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in tribunal appointments.

“4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

“Rejection of list

“(7) The Lieutenant Governor in Council may reject the committee’s recommendations and require it to provide a fresh list.

“Annual report

"(8) The committee shall submit to the Attorney General an annual report of its activities.

"Tabling

"(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly."

1600

**The Chair:** Debate?

**Mr. Kormos:** Thank you, sir. This again is consistent with similar amendments that have been proposed. It provides a fair, multi-partisan and neutral way of appointing tribunal members. It is yet another safeguard ensuring these appointees are not mere political hacks.

**The Chair:** Any further debate?

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 26C.

**Mr. Kormos:** I decline to move that in that it was mooted by the last vote.

**The Chair:** Motion 29C?

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"Public consultation

"(1.1) Before adopting a rule under this section, the tribunal shall,

"(a) post a draft copy of the rule on a website for a period of one month;

"(b) advertise in a paper of general circulation throughout the province that the rule is posted on the website and inviting interested persons to make written submissions relating to the rule to the tribunal before the end of the month;

"(c) ensure that the advertisement referred to in clause (b) appears in the paper daily for a period of at least two weeks starting on the first day the draft copy of the rule is posted on the website; and

"(d) consider any submissions received before adopting the rule."

It's an incredibly important amendment. I'm grateful to the community for proposing this one. When you look at the incredible power that the tribunal has to determine its own process, including overriding each and every section of the SPPA, and when you look, as we will in short order, at the government's incredible amendment to section 6, which creates section 37.1 with the "in its opinion" phrase, it's critical that there be an opportunity for the public to comment on the rules that are being adopted by the tribunal for its process.

**The Chair:** Further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's denied.

Motion 29D.

**Mrs. Elliott:** I move that clause 34(2)(a) of the Human Rights Code, as set out in section 6 of the bill, be struck out.

**The Chair:** Further debate?

**Mr. Kormos:** Let's understand exactly what this does, because it's a valid proposition. Clause (2)(a): The rules may provide "that the tribunal is not required to hold a hearing...." It's important that it's being made clear by opposition members that the government can't have it both ways. It can't say "direct access" and then say, "But there may not be any access." The "direct access" title phrase is a total misnomer. People are being misled by it. I support this proposition.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 29E.

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"No investigatory powers

"(2.1) The tribunal shall not adopt a rule intended to give the tribunal power to conduct an investigation into the subject matter of an application made under this part."

That's why the Human Rights Commission/Tribunal consists of two bodies: a commission and a tribunal. The commission investigates and prosecutes; the tribunal adjudicates. We heard from the chair of the tribunal. If we're talking about the tribunal setting up rules that give it an inquisitorial role, you then have undermined the neutrality, in my view, of the tribunal. It's very un-Canadian as well.

**The Chair:** Thank you, Mr. Kormos. Any debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Mr. Kormos: 29F.

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"Statutory Powers Procedure Act

"(4.1) The rules shall not be inconsistent with the Statutory Powers Procedure Act."

Nothing could be more clear-cut. If the government wants to amend the SPPA, then say so. If the government thinks the Statutory Powers Procedure Act is no longer current, doesn't permit justice, then let's amend the SPPA. But don't permit, as you are doing, the tribunal to exempt itself from every single section without the legislative oversight of the SPPA. This is what happens when you gut the commission and you end up with a tribunal that you want to be all things and in fact it becomes neither fish nor fowl. It was very peculiar. You've got a tribunal that may well adopt an inquisitorial function. You've got a tribunal that may well, in that course of adopting an inquisitorial function, perform an investigative role. Wait till we get to the amendments to sections 37, 38 and 39 of the act that are coming from the government soon—some pretty outrageous stuff. I ask for support for this amendment.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** Lost.

Government motion 30.

**Mr. Zimmer:** I move that section 34 of the act, as set out in section 6 of the bill, be struck out.

**The Chair:** All those in favour? Opposed? Carried.

Mr. Kormos?

**Mr. Kormos:** I move that clauses 35(1)(a) and (b) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

"(a) within two years after the incident to which the application relates; or

"(b) if there was a series of related incidents, within two years after the last incident in the series."

What could be clearer? The assembly passed a major overhaul to the Limitations Act and there was agreement on that. The effort was to create consistency so you didn't have a hodgepodge of limitation dates. It was basically the two-year and six-year proposal. The two-year was the fundamental limitation period proposal. You've got a government amendment coming up that recognizes that the proposal in the bill with respect to limitations is flawed and would expand the limitation period to one year. They're tacitly acknowledging that the period proposed in the bill is inappropriate. What possible argument could be made against the two-year rule when the limitation period for all other actions in the province of Ontario is indeed two years?

**1610**

Now, one could argue that in criminal and quasi-criminal charges, even provincial offences, there are limitation periods for lesser offences in terms of when the charge can be laid, but for serious offences under the Criminal Code there is no limitation period whatsoever. A charge can be laid five years, 10 years, 15 years, 20 years after the act. Is somebody going to suggest here and now that discrimination isn't serious, such that there shouldn't at least be a two-year limitation period? We heard the arguments, and we would have heard far more had people been allowed to come to this committee, about all the sorts of things that can intervene in a person's life before they take the step of actually making a complaint, going to the commission or, in the case of your gutting of the commission, to a tribunal. It seems to me that the tribunal officer can determine if the period of time that has lapsed impacts on, for instance, the quality of the evidence that it's going to hear. It's entirely open to them to say, "Such a considerable period of time has passed, even within the two-year limitation period"—you're not barred from bringing this complaint to the tribunal, but it causes the tribunal, for instance, to doubt the accuracy of some of the evidence. The tribunal is perfectly entitled to do that.

In the interest of consistency and fairness to victims of human rights discrimination, I propose acceptance of this.

**The Vice-Chair (Mrs. Maria Van Bommel):** Any further debate? I'll call the question.

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Zimmer.

**The Vice-Chair:** That motion is lost.

We move on to PC motion 30B.

**Mrs. Elliott:** I move that clauses 35(1)(a) and (b) of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within one year after the incident to which the application relates; or

“(b) if there was a series of related incidents, within one year after the last incident in the series.”

We would submit that an extension to one year would be appropriate under the circumstances.

**The Vice-Chair:** Any further debate? I'll call the question. All those in favour? Opposed? The motion is lost.

Government motion 31.

**Mr. Zimmer:** I move that clauses 35(1)(a) and (b) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within 12 months after the incident to which the application relates; or

“(b) if there was a series of incidents, within 12 months after the last incident in the series.”

**The Vice-Chair:** The motion is out of order. It has already been discussed in the earlier motion, 30B; they're similar motions.

We move to motion 32, a government motion.

**Mr. Zimmer:** I move that section 35 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Application on behalf of another

“(4.1) A person or organization, other than the commission, may apply on behalf of another person to the tribunal for an order under section 42 if the other person,

“(a) would have been entitled to bring an application under subsection (1); and

“(b) consents to the application.

“Participation in proceedings

“(4.2) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the tribunal rules.

“Consent form

“(4.3) A consent under clause (4.1)(b) shall be in a form specified in the tribunal rules.

“Time of application

“(4.4) An application under subsection (4.1) shall be made within the time period required for making an application under subsection (1).

“Application

“(4.5) Subsections (2) and (3) apply to an application made under subsection (4.1).

“Withdrawal of application

“(4.6) An application under subsection (4.1) may be withdrawn by the person on behalf of whom the application is made in accordance with the tribunal rules.”

**The Vice-Chair:** Debate? All those in favour? That's carried.

I've been advised by the clerk that because of a slight change in language—

*Interjection.*

**The Vice-Chair:** They are not identical, as I identified them. In clause (b), the PC motion says “series of related incidents.” The government motion says “series of inci-

dents.” So I'm going to ask the standing committee for unanimous consent to return to government motion 31 for consideration.

**Mr. Kormos:** Chair, on a point of order: With respect, the Chair has made a ruling. The Chair is functus with respect to that matter. One cannot appeal the Chair. The Chair has exhausted its role with respect to a particular motion or amendment once it has ruled it out of order. I don't fault the Chair for seeking unanimous consent, although I question whether it's appropriate for a Chair. I simply don't know; I'm not being critical—

**The Vice-Chair:** I'm actually investigating it as well.

**Mr. Kormos:** I'm not being critical of you for doing that. I appreciate what you're trying to do and I have the highest regard for you. But in my view, the Chair is functus with respect to the matter. Look, I didn't change the rules. The rules prevent us from challenging the Chair; we have to abide by a Chair's ruling. The Chair has made its ruling. It's over. The bill's got to go to committee of the whole anyway.

**Mr. Zimmer:** The 30B, which was the opposition motion, says “if there was a series of related incidents.” Government motion 31 says “if there was a series of incidents.” The difference is that our motion refers to “incidents” and the opposition motion refers to “related incidents.” That is a substantive difference, Madam Chair. I submit, in view of that, that it's quite in order, for your ruling, if you go back to 31.

**Mr. Kormos:** Chair, to that point, you can't appeal the Chair's ruling. However, Mr. Zimmer—what time is it right now?

**The Vice-Chair:** Twenty after 4.

**Mr. Kormos:** I'm very conscious of our 5 o'clock deadline. What I would give unanimous consent to would be for Mrs. Elliott to present her motion again, slightly reworded, and I would invite the government to support it. Is that not a fair compromise, sir? I'm sure Mrs. Elliott will word her amendment as the government wishes. I would give unanimous consent to her reading the amendment onto the record, in your language, such that we could support it.

**The Vice-Chair:** Mr. Zimmer?

**Mr. Zimmer:** Madam Chair, this is a substantial point. I'm going to ask for about a three-minute adjournment to clarify my thinking on this.

**Mr. Kormos:** Talk to me for a minute.

**The Vice-Chair:** We will have a three-minute recess.

*The committee recessed from 1620 to 1625.*

**The Vice-Chair:** I call the standing committee back to order.

**Mr. Kormos:** Madam Chair, in the spirit of co-operation that I've maintained throughout this process, I seek unanimous consent to allow Mrs. Elliott to move yet another motion amending section 6, specifically clauses 35(1)(a) and (b) of the Human Rights Code.

**The Vice-Chair:** I'll call the question: unanimous consent? Agreed. You have unanimous consent.

**Mrs. Elliott:** I move that clauses 35(1)(a) and (b) of Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within one year after the incident to which the application relates; or

“(b) if there was a series of incidents, within one year after the last incident in the series.”

**The Vice-Chair:** Discussion?

**Mr. Kormos:** This obviously wasn't my preferred choice. I very much wanted it to be a two-year limitation period so there would be consistency with the Limitations Act and some weight given to submissions made to the committee. I acknowledge that the government had a motion in the same language, so if I'm going to support a motion that grants only a one-year limitation period rather than the two-year, which I believe is fairer—I appreciate Mrs. Elliott has approached this somewhat conservatively, and I understand—I'd far sooner support Mrs. Elliott's amendment than the amendment put by the government lest there somehow be an effort to say, “Oh, but the government acquiesced to opposition amendments.” Mr. Zimmer, please. I engaged in some of the most egregious pettifoggery in an effort to get to where we are today. It had nothing to do with the government agreeing to one of the opposition's amendments.

**The Vice-Chair:** Any further debate? I'll call the question. All those in favour of PC motion 30b? Carried. Thank you for your indulgence.

We'll move on to motion 33, a government motion.

**Mr. Zimmer:** I think it's 32.

**The Vice-Chair:** We already did 32. We did it before I went back.

**Mr. Zimmer:** Oh, yes.

**The Vice-Chair:** That's my fault, Mr. Zimmer. I've caused the confusion here.

**Mr. Zimmer:** So we're on 33 now?

**The Vice-Chair:** We're moving on to government motion 33, if you would.

**Mr. Zimmer:** I move that subsection 35(5) of the act, as set out in section 6 of the bill, be amended by,

(a) striking out “has not been finally determined” in clause (a) and substituting “has not been finally determined or withdrawn”; and

(b) adding “or the matter has been settled” at the end of clause (b).

**The Vice-Chair:** Debate? I'm going to call the vote. All those in favour? Opposed? The motion carries.

We move on to NDP motion 33A.

**Mr. Kormos:** I move that subsections 35(5) and (6) of the act, as set out in section 6 of the bill, be struck out.

Subsection 35(5), of course, (a) and (b)—this is very peculiar stuff, because you can't take a human rights complaint, standing alone, to the civil courts. In other words, you can't seek damages in the civil courts for a violation of one's rights under the code. You can—and this bill preserves the right to—request damages for a breach of one's human rights if the breach is attached to another claim, a tort claim.

If the government is proceeding with this omnipotent tribunal model, including the power to make its own rules, it seems to me that barring a claim because a court has ruled—because you understand what we run the risk of. If a civil action has ruled that you can collect damages for unjust dismissal—I suppose that's a good example—but “we won't add damages for breach of your rights under the code because we don't believe your code rights have been breached,” that's a determination of that issue by a court. The argument is that the tribunal has exclusive jurisdiction over code complaints unless that complaint, of course, is attached as secondary to a tort. And if your argument for doing that is that the tribunal has expertise, why are you going to let a court, which you say doesn't have necessarily the expertise in human rights issues, effectively state that a cause of action is not validated and then use that as a reason to bar the person access to the tribunal? It seems the tribunal should have the authority at the end of the day to determine whether or not there has been a violation of the Human Rights Code by virtue of discrimination against a particular party. And the way to resolve that, of course, is to delete subsections 35(5) and (6).

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's defeated.

Page 33B.

**Mr. Kormos:** I move that section 35 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Application by organization

“(7) An organization representing a group of persons identified by a prohibited ground of discrimination may make an application to the tribunal under this section if,

“(a) the organization has a genuine interest in the complaint; and

“(b) requiring members of the group to make an individual application would likely result in undue hardship.

“Application

“(8) Subsections (1) to (6) apply with necessary modifications to an application made by an organization under subsection (7).”

I think, with respect, this is just good policy, a good approach. Unfortunately, we didn't get to hear submissions made by members of communities who are more comfortable working through an organization than they are as individuals. We received a submission—that that's the problem—on behalf of transgender communities,

amongst others, that talk very specifically to that issue. Why shouldn't we let an organization that advocates for, that speaks for, that has as its members a community of people with some commonality—why in the world wouldn't we permit that organization to bring the complaint? If we have a metro Toronto tenants' organization and it can establish that its members are discriminated against in a way that violates the code, why shouldn't the metro Toronto tenants' association be able to bring the grievance? We're starting to make some headway. The government, in Bill 103, the police oversight, acquiesced to the call for third-party complaints to be made. This isn't even that. This is merely seeing that organizations have a right to make a complaint. I think it opens up the process, and surely we want to make the process as open as possible and ensure that people have access. It's about access. Organizational complaints are one of the ways of giving access to people who wouldn't feel comfortable, capable—especially when you don't have the commission performing that advocacy role—who don't feel comfortable, capable for any number of good reasons; reasons, to be fair, that you and I may not understand because, as middle-class people, we fare reasonably well. We haven't walked some of the paths that other people, our neighbours, sisters and brothers, have walked, and this is a specific request from them.

1630

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** I would certainly support this amendment for the same reasons that Mr. Kormos has indicated, that if we accept the proposition that a third party can make an application on behalf of an individual who for whatever reason doesn't feel comfortable bringing it forward themselves, then there's no reason why a group cannot advocate in the same way.

**The Chair:** Thank you. Any further debate? None.

**Mr. Kormos:** Recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's lost. 33C.

**Mr. Kormos:** I move that subsection 36(1) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

"Application for commission:

"36(1) The commission may apply to the tribunal for an order under section 43 if the commission is of the opinion that it would be in the public interest to do so."

The existing 36(1) creates a complex process of hoops that the commission has to jump through. This simply restates the obvious. If the commission is of the view that

it's in the public interest, let her rip; let's let the commission do its job.

**The Chair:** Thank you.

**Mr. Kormos:** Recorded vote, please.

### Ayes

Kormos.

### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's lost. 33D.

**Mrs. Elliott:** I move that clauses 36(1)(a) and (b) of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

"(a) there are infringements of rights under part I that the commission has not been able to adequately address under part III;

"(b) an order under section 43 could address the infringements; and"

This is to address the issue, as previously mentioned, of the rights of a complainant to bring a matter before the commission rather than going before the tribunal so that it would not be only systemic issues that would be addressed but could also be individual issues.

**The Chair:** Thank you, Ms. Elliott. Any further debate? Seeing none, all those in favour? Opposed? Lost. Number 34.

**Mr. Zimmer:** I move that clauses 36(1)(a), (b) and (c) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

"(a) it is in the public interest to make an application; and

"(b) an order under section 43 could provide an appropriate remedy."

**The Chair:** Any debate? Seeing none. All those in favour? Opposed? Carried.

Number 35.

**Mr. Zimmer:** I move that section 36 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"(4) If a person or organization makes an application under section 35 and the commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the tribunal determines otherwise."

**The Chair:** Any debate? All those in favour? Opposed? Carried.

Number 36.

**Mr. Zimmer:** I move that part IV of the act, as set out in section 6 of the bill, be amended by adding the following sections:

"36.1 The parties to an application under section 35 or 36 are the following:

"1. In the case of an application under subsection 35(1), the person who made the application.

"2. In the case of an application under subsection 35(4.1), the person on behalf of whom the application is made.

"3. In the case of an application under section 36, the commission.

"4. Any person against whom an order is sought in the application.

"5. Any other person or the commission, if they are added as a party by the tribunal.

"Intervention by commission

"36.2(1) The commission may intervene in an application under section 35 on such terms as the tribunal may determine having regard to the role and mandate of the commission under this act.

"Intervention as a party

"(2) The commission may intervene as a party to an application under section 35 if the person or organization who made the application consents to the intervention as a party.

"Disclosure of information to commission

"36.3 Despite anything in the Freedom of Information and Protection of Privacy Act, at the request of the commission, the tribunal shall disclose to the commission copies of applications and responses filed with the tribunal and may disclose to the commission other documents in its custody or in its control."

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** I just have a question of Mr. Zimmer, or perhaps of counsel. With respect to 36.2(1), "Intervention by commission," is it that the commission may intervene as a party as of right?

**Mr. Zimmer:** Counsel?

**Ms. Robin:** Under 36.2(1)?

**Mrs. Elliott:** Yes.

**Ms. Robin:** The commission may intervene on such terms as the tribunal may determine.

**Mrs. Elliott:** So it's going to be subject to the tribunal to determine the limit, whether or not the commission—

**Ms. Robin:** The tribunal cannot limit the commission from intervening; it can set the terms of its intervention.

**Mr. Kormos:** Chair, with respect, I'm going to read this very carefully: "The commission may intervene"—so it's discretionary on the part of the commission; in other words, the commission decides whether or not it will intervene—"in an application under section 35 on such terms as the tribunal may determine having regard to the role and mandate of the commission under the act." So the tribunal determines the role and mandate in the process of creating the terms under which the commission can intervene.

That means the tribunal has the power to say, "The commission will be entitled to engage in a watching brief of the proceedings." It could, because we don't think the commission's role or mandate in this instance would permit it to intervene in an activist role. Or the commission may intervene to the extent of explaining policy or procedure. And I hear you. Your argument is that it

doesn't permit the tribunal to bar the commission, should the commission choose, but the latitude is so broad that it could affect—I mean, at the end of the day, the commission's participation could be minimal. Less than modest: "on such terms as the tribunal may determine...."

I hear what you're saying is the intent of the amendment, but I'm not sure the language of the amendment takes us to that end or that destination. That's what causes Mrs. Elliott concern, and I share her concern: "on such terms as the tribunal may determine...." It just seems to me that there could be—once again, Mr. Zimmer, I'll say to you, because I hear counsel and I trust their commentary in terms of the intention. If you want to hold this and get some language in there that is more reflective of what we hear to be the intention of the government, we'd be more than pleased to have this introduced later. And I tell you—no fooling around—we'll make sure the amendment is included in the vote at some point before we retire today.

**Mr. Zimmer:** Thank you, but let me just say in response that the section reads, "36.2(1) The commission may intervene in an application under section 35 on such terms as the tribunal may determine...." With the greatest respect, Mr. Kormos, you read, "as the tribunal may determine," and you stopped. But there's additional language: "having regard to the role and mandate of the commission under this act."

1640

**Mr. Kormos:** Exactly. I didn't disregard that. I read the whole section: "on such terms as the tribunal may determine...." The determination of the tribunal is the tribunal determining the role and mandate of the commission under this act as well.

I put to you that a position we would far prefer is that the commission have the right to intervene on such terms as the commission deems appropriate. If it's with respect to the role and mandate of the commission, isn't the commission better capable of determining its role and mandate? And if the commission has ownership of its role and mandate, then it should be able to say, "We are intervening on these terms." Do you understand what I'm saying? If the commission has ownership of its terms and mandate—if the commission and the tribunal are separate entities, if the commission isn't subject to the authority of the tribunal—then the commission should be capable of interpreting its role and mandate and the commission should be setting the terms.

We're going to deal with subsection (2) in terms of consent in just a minute, but I put that to you. I hear what you're saying, but I'm saying to you that it's not very clear at all. I don't pretend to be an expert at darned near anything, but I've read a couple of pieces of legislation in my lifetime, and the language here concerns me because it's not clear at all.

You say that "regard to the role and mandate of the commission" is somehow independent of the tribunal's determination of it, but I'm saying no. It clearly is the—

*Interruption.*

**Mr. Kormos:** I suspect that's a 30-minute bell, and we don't have to go there for a while yet.

Do you understand what I'm saying, sir? I have great concern about the language here. I think it's problematic. I submit that, hearing what the government's intent is and having no quarrel with the stated intent, but suggesting that if the commission has a significant role, it's the commission that determines the manner in which it intervenes, because the commission has ownership of the determination of its rule and mandate. We agree with that; you've said that the tribunal may refer to policy papers by the commission and so on, so the commission is clearly designed, in your view, to have an inherent capacity to determine what it becomes, subject to the legislative limits.

I'm not going to move you at all, am I? Just shake your head if I'm not, and I'll move on to the next argument. Just go like this, Mr. Zimmer, and I'll move on to the next argument.

All right. Let's talk about subsection (2). I'm moving on to the next argument. "The commission may intervene as a party ... if the person or organization who made the application consents to the intervention...." If the commission is going to be responsible for the oversight of identification and prosecution of systemic discrimination, why are we letting a party effectively veto the commission's intervention? You've already indicated earlier that you can have two separate awards. If there's commission participation with an individual, the tribunal can order one thing for the individual and one thing for the commission—am I accurate in that interpretation? You're not saying that the party has to accept the commission's—for instance, if the tribunal orders, vis-à-vis the commission's intervention, that a policy has to be changed in the city of Toronto—I don't want to pick on the city of Toronto, but here we are—but also that a victim of discrimination deserves a remedy in addition to that, it's my understanding that the tribunal can do that. So why, then, would you bar—you are prohibiting, or inhibiting, rather, the capacity of the commission to perform the role that you state you want it to have, and that is in terms of addressing systemic discrimination. And we've already discussed, over and over again, that you can't talk about individual discrimination without inherently talking about systemic discrimination.

Look, I leave it at that. I'll be voting against this, Chair. But I also invite you to please, if you're interested at all in cleaning this up a little bit—we'll guarantee that it gets voted on before this committee retires today.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** In the interest of saving time so we can move on to other things, I would just like to echo Mr. Kormos's concerns and indicate that if the commission is to have a real and meaningful role as we move forward, it's really important that it not be subject to the discretion of the tribunal in deciding whether it can intervene in a proceeding or not.

**The Chair:** Thank you. Any further debate?

**Mr. Kormos:** Recorded vote.

## Ayes

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

## Nays

Elliott, Kormos.

**The Chair:** It's carried.

Motion 37.

**Mr. Zimmer:** I move that sections 37, 38 and 39 of the act, as set out in section 6 of the bill, be struck out and the following substituted:

"Powers of tribunal

"37. The tribunal has the jurisdiction to exercise the powers conferred on it by or under this act and to determine all questions of fact or law that arise in any application before it.

"Disposition of applications

"37.1 The tribunal shall dispose of applications made under this part by adopting the procedures and practices provided for in its rules or otherwise available to the tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications.

"Interpretation of part and rules

"37.2 This part and the tribunal rules shall be liberally construed to permit the tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it.

"Statutory Powers Procedure Act

"38(1) The provisions of the Statutory Powers Procedure Act apply to a proceeding before the tribunal unless they conflict with a provision of this act, the regulations or the tribunal rules.

"Conflict

"(2) Despite section 32 of the Statutory Powers Procedure Act, this act, the regulations and the tribunal rules prevail over the provisions of that act with which they conflict.

"Tribunal rules

"39(1) The tribunal may make rules governing the practice and procedure before it.

"Required practices and procedures

"(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the tribunal:

"1. An application that is within the jurisdiction of the tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.

"2. An application may not be finally disposed of without written reasons.

"Same

"(3) Without limiting the generality of subsection (1), the tribunal rules may,

“(a) provide for and require the use of hearings or of practices and procedures that are provided for under the Statutory Powers Procedure Act or that are alternatives to traditional adjudicative or adversarial procedures;

“(b) authorize the tribunal to,

“(i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and

“(ii) determine the order in which the issues and evidence in a proceeding will be presented;

“(c) authorize the tribunal to conduct examinations in chief or cross-examinations of a witness;

“(d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;

“(e) authorize the tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;

“(f) authorize the tribunal to require a party to a proceeding or another person to,

“(i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,

“(ii) provide a statement or oral or affidavit evidence, or

“(iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and

“(g) govern any matter prescribed by the regulations.

“General or particular

“(4) The rules may be of general or particular application.

“Consistency

“(5) The rules shall be consistent with this part.

“Not a regulation

“(6) The rules made under this section are not regulations for the purposes of the Regulations Act.

“Public consultations

“(7) The tribunal shall hold public consultations before making a rule under this section.

“Failure to comply with rules

“(8) Failure on the part of the tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the tribunal in a particular manner is not a ground for setting aside a decision of the tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter.

“Adverse inference

“(9) The tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the tribunal for the party to do anything under a rule made under clause (3)(f).”

1650

**The Chair:** Mr. Kormos?

**Mr. Kormos:** This is shocking stuff. Let's start with 37.1: “The tribunal shall dispose of applications ... by

adopting the procedures and practices provided for in its rules or otherwise available to the tribunal which, in its opinion”—its opinion; no objective standard—“offer the best opportunity for a fair, just and expeditious resolution.”

This is outrageous stuff in a British common law country, with centuries of jurisprudence, that the tribunal, “in its opinion”—there's no opportunity for a party to argue that the rules used didn't offer the best opportunity for a “fair, just and expeditious resolution,” because it's all about the opinion of the tribunal. There's no recourse for the victim of a process that is objectively unfair, unjust and not expeditious. Wow.

Moving on to section 39: “authorize the tribunal to conduct examinations in chief or cross-examinations of a witness.” Just how comfortable is either a complainant or a respondent, the subject matter of a complaint, supposed to feel with the tribunal, the court, entering the fray, getting engaged in the exchange?

And then, aha, buried in page 3: authorize the tribunal to call upon a party to “provide a statement or oral or”—oops—“affidavit evidence.” We talked about that during the brief, brief periods in which there was public access, didn't we? There could even be a hearing based on affidavit evidence, or statements. Since you have another description of oral evidence, clearly you don't mean an oral statement even. You're talking about a written statement that isn't an affidavit, that is unsworn. You're giving the tribunal the power to receive unsworn evidence. At least an affidavit is sworn evidence. You clearly can't mean an oral statement, because you say “oral evidence,” and then you say “a statement.” That means it's written, friends, and it means it's unsworn, because you also talk about an affidavit, which is sworn. That is shocking.

“(6) The rules made under this section are not regulations for the purposes of the Regulations Act.”

That means that there's no governmental oversight whatsoever. That tribunal runs helter-skelter. Wow.

“(8) Failure ... of the tribunal to comply with” its own rules—the extraordinary rules that it can make—“is not a ground for setting aside a decision of the tribunal ... unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter.

This is unheard-of. This is outrageous. This is like courts in totalitarian countries, literally the kangaroo trials that we expect from tinpot dictatorships or some of the worst totalitarian regimes, and we condemn and mock them for doing it. The government is abdicating all of its responsibility here. Oh, you'll speed up the process all right; it will be greased up like a pig. It will be speeded up: “You provide a written statement, you provide a written statement, and we'll make a decision. If you don't like it, too bad, so sad, because those are the rules.” Because the tribunal—catch this: “The rules may be of general or particular application.” The tribunal doesn't even have to abide by its own rules. “Particular application”: That means it can make new rules every time it

has a new case before it, doesn't it? The rules may be "of general"—which means they apply to all cases—or "of particular" application. You talk about the difficulty complainants have now? When you've got a tribunal, how is a tribunal going to deal with what they see as a nuisance complainant? "Oh, we'll fix that nuisance complainant. We'll set up a little rule structure just for him or her and they'll be out of here in a New York minute, out of our hair and no more bother." The old Pontius Pilate trick. I'm amazed.

I thought nothing could amaze me anymore. The Toronto exhibition doesn't amaze me anymore; the locks in the seaway don't amaze me anymore; Desperate Housewives doesn't amaze me anymore. I'm sorry. The plot-lines are just too similar. I thought I couldn't be amazed anymore, but this truly amazes me. Look, I would report myself to the law society if I voted for this. I'd report myself. I'd beg the law society to discipline me if, as a lawyer, I supported this.

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** We're dealing with some very serious and fundamental principles here. It's whether the rules of natural justice that should be applying to hearings as enunciated in the Statutory Powers Procedure Act are going to apply. Despite the series of material that we have in this amendment, the basic fact is that the rules of natural justice are not going to be adhered to, at least as enunciated in the SPPA. That really is a serious concern. Mr. Anand, who was also a proponent of this legislation, agreed that the SPPA should apply to this. So I think when you start getting into some of the issues about accepting unsworn testimony and allowing the hearer of the application to be also asking questions and getting into that sort of inquisitorial mode, it's getting into pretty dangerous territory. I can't support this amendment either.

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** Carried.  
PC motion 37A.

**Mrs. Elliott:** I move that section 37 of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

"Hearing within one year

"37(1) The tribunal shall hold a hearing in respect of every application made under section 35 within one year of the date on which the application was made.

"Jurisdiction

"(2) The tribunal has jurisdiction to exercise the powers conferred on it by or under this act and to deter-

mine all questions of fact or law that arise in any application before it."

The purpose of this is really just to give effect to the government's stated intentions to have a faster, more effective process.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That's lost.

NDP motion 37B.

**Mr. Kormos:** I move that section 37 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"Right to refuse mediation

"(4) If the tribunal offers mediation as method of resolving a dispute between parties in accordance with its rules, the parties shall have the right to refuse the mediation and to proceed to a hearing by the tribunal."

I know this conflicts with some of the participants who called for mandatory mediation. The problem is, we've got mandatory mediation now in our civil courts and it's mediation that has as its motivation court efficiency. Do you understand what I'm saying? It's designed to reduce the court load. You end up with a lot of muscle mediation going on, where people are encouraged to resolve their dispute because to not do so would mean years and years and years waiting; it would mean thousands and thousands and thousands of dollars litigating. Those are pretty persuasive arguments, but they don't necessarily result in justice.

This has been a long-time concern about mediation, for instance, in spousal abuse cases in the family courts, and the same application would apply to sexual harassment by a boss, for instance, by a person in authority, because parties may be sufficiently fearful of the perceived or real power of the other party that mediation would be an unfair process to submit them to.

It seems to me that the commission that you're dismantling does a pretty good job with mediation as it is, as compared to letting a tribunal—because that's what you've suggested and that's what's been proposed by the chief of the tribunal. When the chief of the tribunal was here, you heard the phrase "highly evaluative mediation," didn't you? That's what some—

**The Chair:** Mr. Kormos, it's 5 o'clock and I have to read this note to the committee members.

**Mr. Kormos:** Is it 5 o'clock already?

**The Chair:** It's now 5 p.m. Pursuant to the order of the House dated November 22, 2006, all debate will cease and all motions which have not yet been moved shall be deemed to have been moved.

I will now put every question necessary to dispose of all remaining sections of the bill and any amendments thereto.

The order of the House also authorizes the committee to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed pursuant to standing order 127(a).

*Interjection.*

**The Chair:** Yes, there's an error in the date. The order of the House is dated November 21, 2006.

**Mr. Kormos:** Chair, if I may, what about our vote in the House?

**The Chair:** Yes, I think we should break now.

**Mr. Kormos:** But I'm questioning whether, when we've got a time allocation motion—

**The Chair:** The vote in the House—

*Interjection.*

**Mr. Kormos:** I have no interest in voting in the House.

**The Chair:** We'll break now and come back after the vote.

**Mr. Kormos:** Chair, we can't have certainty; you can't say a specific time. I'm going to be coming here promptly after the vote. Let's not play games in terms of starting before each caucus is represented.

**The Chair:** I request all members to be here immediately after the vote. Thank you very much.

*The committee recessed from 1703 to 1719.*

**The Chair:** Welcome back. We left off at NDP motion 37B. All those in favour?

**Mr. Kormos:** One moment. This 37B is part of the post-5 o'clock regime?

**The Chair:** Yes.

**Mr. Kormos:** Because it hadn't been moved—we had voted on 36, correct?

**The Chair:** It was 37A, the PC motion.

**Mr. Kormos:** No, 37A is the one-year limitation period. We voted on that a long time ago.

*Interjections.*

**Mr. Kormos:** Okay. So 37A had been moved by Mrs. Elliott and we had voted on it—

**The Chair:** Yes.

**Mr. Kormos:** So now we're into the non-movement, deemed-to-be-moved 37B. Thank you. A recorded vote on 37B please.

**The Chair:** All votes that have been requested to be recorded will be deferred to the end, so we'll defer 37B.

Now 37C.

**Mr. Kormos:** Recorded vote.

**The Chair:** NDP motion 37D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 38.

**Mr. Kormos:** Recorded vote.

**The Chair:** If you're going to request a recorded vote for all of them, Mr. Kormos—

**Mr. Kormos:** No. There will be some that I won't require a recorded vote for; there just happen to be a number in a row here that—

**The Chair:** NDP motion 38A.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 39.

**Mr. Kormos:** Recorded vote.

**The Chair:** NDP motion 39B.

**Mr. Kormos:** Recorded vote.

**The Chair:** PC motion 39C.

**Mrs. Elliott:** Recorded vote.

**The Chair:** NDP motion 39D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 40: No recorded vote? All those in favour? Opposed? It's carried.

Government motion 41: All those in favour? Opposed? Carried.

Government motion 42: All those in favour? Opposed? Carried.

PC motion number 42A.

**Mrs. Elliott:** Recorded vote.

**The Chair:** A recorded vote.

NDP motion 42B.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 42C.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 42D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 43: All those in favour? Opposed? Carried.

NDP motion 43A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 44: All those in favour? Opposed? Carried.

NDP motion 44A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 44B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 44C.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 45.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 45A.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** Government motion 46: All those in favour? Opposed? Carried.

Government motion 47.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 48.

**Mr. Kormos:** Chair, slow down a little bit or else they'll all be recorded votes. Let me just take a glance at them as we're going through.

**The Chair:** Government motion 48: All those in favour? Opposed? Carried.

Was 47 a recorded vote?

**Mr. Kormos:** Yes, sir.

**The Chair:** Government motion 49: All those in favour? Opposed? Carried.

We'll defer the section 6, as amended, vote.

New section 6.1: NDP motion 49A.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 50: All those in favour? It's carried.

We're on to section 7, government motion 51.

**Mr. Kormos:** Mr. McGrath, we're going to have a 20-minute adjournment in around three minutes.

**Mr. Zimmer:** Just a second. Slow down for a second.

**Mr. Kormos:** It's the old observation about never wanting to see sausage or legislation made; they're both unattractive processes.

**Mr. Zimmer:** On a point of order, what are we doing with 6.1, as amended?

**The Chair:** Because there's a recorded vote, we'll be deferring that.

**Mr. Zimmer:** Thank you.

**The Chair:** Section 7, government motion 51: All those in favour? Carried.

Shall section 7, as amended, carry?

**Mr. Kormos:** Recorded vote.

**The Chair:** I've been advised that PC motion 51A is out of order.

**Mr. Kormos:** One moment, Chair. All motions are deemed to be moved. How then can the orderliness, if they're not read into the record, be determined? Orderliness is a matter of public record. With respect, the clerk clearly has an opinion about it, but if it's not read into the record, it's difficult for people—because you can't do a point of order on a bill until it's read in, right? When I've had amendments that they said were out of order: "Oh, no, wait. Wait until I move the amendment, then you can make a point of order." So it's deemed to have been moved but not read into the record. It creates a problem. It seems to me that then it's for the government to defeat it.

**The Chair:** Would you like this to be read into the record, Mr. Kormos?

**Mr. Kormos:** You can't read it into the record. It's deemed to have been moved.

**The Chair:** Yes, you can.

**Mr. Kormos:** What do you mean, "Yes, you can"? We have a time allocation motion. Then I want them all read into the record. They're deemed to have been moved. They're moved already.

**The Chair:** On the request of—

**Mr. Kormos:** On the request of the mover? Mrs. Elliott is not requesting that it be read into the record.

**The Chair:** On the request of any member it can be—

**Mr. Kormos:** No member has requested that it be read into the record, so there we go. Deemed to have been moved—okay, let's dealt with 51B. And a recorded vote on 51A, of course.

**The Chair:** NDP motion 51B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 51D.

**Mr. Kormos:** What about 51C, sir? Is this a redundant one?

**The Chair:** Motion 51C?

**Mr. Kormos:** Yes, an NDP motion.

**The Chair:** NDP motion 51C.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 51—

**Mr. Zimmer:** Hold it. Just slow down for a second. Motion 51C is deferred for a recorded vote, is that right?

**The Chair:** Yes.

PC motion 51D.

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 52: All those in favour? It's carried.

Government motion 53: All those in favour? It carries.

Government motion 54: Carried.

**Mr. Kormos:** Motion 54A: Recorded vote, please.

**The Chair:** Section 9, PC motion 54B:

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 55: All those in favour? It's carried.

Government motion 56.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 56A.

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 57: All those in favour? It's carried.

NDP motion 57A.

**Mr. Kormos:** Recorded vote, please, sir.

**The Chair:** Government motion 58: All those in favour? Carried.

NDP motion 58A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 58B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 59: All those in favour? Carried.

Government motion 59A: All those in favour? Carried.

Government motion 60: All those in favour? Carried.

**The Chair:** Shall section 11, as amended, carry?

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 61: All those in favour? Carried.

NDP motion 61A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Shall section 13 carry?

**Mr. Kormos:** Recorded vote, please.

I'm requesting 20 minutes as per the time allocation motion, please. We're only allowed one 20-minute recess. If it's a problem, then somebody propose an alternative. I didn't write the time allocation.

**The Chair:** I have 5:31 on my clock. We'll meet back here at 5:51. Thank you very much.

*The committee recessed from 1731 to 1751.*

**The Chair:** Welcome back, folks.

**Mr. Kormos:** It's always a pleasure.

**The Chair:** We'll resume the clause-by-clause consideration of Bill 107.

Motion 37B: A recorded vote was requested.

## Ayes

Elliott, Kormos.

## Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** NDP motion 37C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.  
NDP motion 37D.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Government motion 38.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's carried.  
NDP motion 38A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's defeated.  
Government motion 39.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.  
NDP motion 39B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** the motion is lost.  
PC motion 39C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** The motion is lost.  
NPD motion 39D.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
PC motion 42A.

**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** NDP motion 42B.

**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 42C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 42D.

**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 43A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
NDP motion 44A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Lost.  
NDP motion 44B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
NDP motion 44C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
Government motion 45.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
NDP motion 45A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
Government motion 47.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
Shall section 6, as amended, carry? All those in  
favour?

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
1800

Thank you for your patience, folks. NDP motion 49A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Shall section 7, as amended, carry?

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Opposed? It's carried.  
PC motion 51A: That's out of order.  
NDP motion 51B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** PC motion 51C.

*Interjection.*

**The Chair:** Sorry about that. My apologies. This was crossed out.

*Interjection.*

**The Chair:** I'm advised that 51C is out of order.

PC motion 51D: All those in favour?

**Mr. Kormos:** Just a minute, Chair. This is the problem with ruling things out of order during the course of a vote. During the course of a vote is the worst possible time to rule things out of order. My motion, 51C, moves that section 46.1 of the act, as set out in section 8 of the bill, be struck out.

**The Chair:** I've been advised that that's been voted on and carried.

**Mr. Kormos:** Okay. Section 46.1 has been voted on and carried.

**The Chair:** It's identical to government motion 52, which has already carried.

**Mr. Kormos:** Okay, that's better.

**The Chair:** PC motion 51D.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

NDP motion 54A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.

Shall section 8, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.

Section 9: PC motion 54B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.

Government motion 56.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.

Shall section 9, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Section 10: PC motion 56A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

NDP motion 57A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.

NDP motion 58A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

NDP motion 58B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

Shall section 10, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Shall section 11, as amended, carry?  
Carried.

Section 12: NDP motion 61A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Shall section 12, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Lost.

Shall section 13 carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall the title of the bill carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall Bill 107, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall I report the bill, as amended, to the House?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Thank you very much, folks. That concludes our business for Bill 107. I'd like to thank staff and all sides for their co-operation, and the ministry and the folks who came out for these hearings. That concludes the hearings for Bill 107.

*The committee adjourned at 1808.*



## CONTENTS

Wednesday 29 November 2006

**Human Rights Code Amendment Act, 2006, Bill 107, *Mr. Bryant* / *Loi de 2006*  
modifiant le Code des droits de la personne, projet de loi 107, *M. Bryant* ..... JP-983**

### STANDING COMMITTEE ON JUSTICE POLICY

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Mr. David Zimmer (Willowdale L)

#### **Also taking part / Autres participants et participantes**

Ms. Juliet Robin, counsel,  
policy division, Ministry of the Attorney General

#### **Clerk / Greffière**

Ms. Anne Stokes

#### **Staff / Personnel**

Ms. Sibylle Filion, legislative counsel



JP-36

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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 6 December 2006

# Journal des débats (Hansard)

Mercredi 6 décembre 2006

**Standing committee on  
justice policy**

Organization

**Comité permanent  
de la justice**

Organisation

Chair: Lorenzo Berardinetti  
Clerk: Anne Stokes

Président : Lorenzo Berardinetti  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 6 December 2006

Mercredi 6 décembre 2006

*The committee met at 1047 in committee room 1.*

## ELECTION OF CHAIR

**The Vice-Chair (Mrs. Maria Van Bommel):** I call this committee on justice policy to order. Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

**Mr. Bas Balkissoon (Scarborough—Rouge River):** I would like to nominate Mr. Berardinetti as the Chair.

**The Vice-Chair:** Are there any further nominations? Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** Look, I have regard for Mr. Berardinetti, but he's already a deputy whip. He's going to—what—double-dip? I know you can't double-dip in terms of accessing two salaries, but Tony Ruprecht has nothing. There are some government members who are making pigs of themselves, picking up more than one perk job, to the exclusion of others. I want to nominate Tony Ruprecht for the position of Chair. He has seniority, he's been faithful to his Liberal colleagues, he certainly has the experience, and he speaks more than one language.

**The Vice-Chair:** Thank you for your concern for Mr. Ruprecht, Mr. Kormos, but you can only nominate people who are members of the standing committee.

**Mr. Kormos:** Oh, he gets stuck in regs, the punishment committee, right?

**The Vice-Chair:** Thank you very much, Mr. Kormos. Are there any further nominations? There being no further nominations, I declare nominations closed. I congratulate Mr. Berardinetti. He is now the new elected Chair of the committee.

**Mr. Kormos:** By acclamation.

**The Vice-Chair:** You're right, Mr. Kormos: acclaimed as Chair. Thank you very much. I now surrender the chair.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you, members of the committee. I prepared a speech last night, which I can start off with.

Let the word go forth from this time and place to friend and foe alike that a torch has been passed to a new generation—oh, wrong speech.

*Laughter.*

**Interjection:** The Kennedys are not here.

**The Chair:** Sorry about that.

**Mr. Kormos:** You just got an increase in salary.

**The Chair:** No. I'm deputy whip already, though.

**Mr. Kormos:** Yes, but you make more as a Chair than a deputy whip.

**The Chair:** It's about the same.

## COMMITTEE BUSINESS

**The Chair:** Members of the committee, I want to ask for motions to elect members of the subcommittee. Councillor—I mean—

**Mr. Balkissoon:** That's good. We've known each other too long.

**The Chair:** There's a slip you can note in Hansard, that I think I'm at city hall still. Mr. Balkissoon?

**Mr. Balkissoon:** Thank you, Mr. Chair. I move that the membership of the subcommittee on committee business be revised as follows: That Mr. Zimmer be appointed in the place of Mr. Berardinetti.

**The Chair:** Any debate?

**Mr. Kormos:** This is debatable, isn't it?

**The Chair:** It is debatable. It's a motion.

**Mr. Kormos:** Remarkable. That means that each of us has 20 minutes to kick the can.

Mr. Zimmer is exhausted. Mr. Zimmer has been doing the Attorney General's heavy lifting from day one, his dirty work, his wet work. For the life of me, I don't know why Mr. Zimmer wouldn't be recognized for the incredible labours he has contributed, not just to the welfare of his caucus but perhaps to its demise in the polls. Why he isn't being given consideration for those tremendous labours is beyond me. Does he get thanks? Does he get credit? The Attorney General, in the House the other day, in the wrap-up to Bill 107 did not thank Mr. Zimmer once.

**Mrs. Carol Mitchell (Huron—Bruce):** That is not what we're discussing.

**The Chair:** He's allowed the time to speak.

**Mrs. Mitchell:** So he can go on and on about Bill 107?

**Mr. Kormos:** Only for 20 minutes.

He did not thank Mr. Zimmer once for Mr. Zimmer being out there on the front lines, in the trenches, taking the flak, taking the heat and defending what some saw as a somewhat indefensible position, but doing it, quite frankly, in a far better spirit than I would have done it with. I think it's time for Mr. Zimmer to have a rest. I think he deserves a bit of a break, the opportunity to put his feet up and reflect on what he's done to Ontarians in

the last three years at the request and behest of the Attorney General.

Having said that, I think he would be a fine member of the—for the life of me, I don't know why this whole committee is electing the government's appointee to the subcommittee. I really don't. I don't recall being elected to the subcommittee. Mind you, I'm the only NDP member on the committee, so I guess the choices are few. It's rather limited.

**Mrs. Mitchell:** Be grateful for that, Peter. Be grateful for that.

**Mr. Kormos:** I'd love to have colleagues here.

**Mrs. Mitchell:** I meant competition.

**Mr. Kormos:** Oh, I love competition. It makes me nervous and anxious and I quake at the thought of it, but at the end of the day, I enjoy it.

I think Mr. Zimmer would—I just can't believe the committee is being called upon to vote rather than the Liberals being allowed to appoint their representative on the subcommittee. But what the heck, I'm prepared to go with it.

**The Chair:** Thank you. Are any other nominations for subcommittee? Seeing none, we only have Mr. Zimmer. Mr. Zimmer, congratulations. You have been appointed to the subcommittee on justice policy.

**Mr. David Zimmer (Willowdale):** Thank you.

**The Chair:** There's a script in front of me that I'm supposed to read.

Having now completed the organizational procedure for the committee, is there any other business?

For the committee's information, there are currently five private members' bills referred to this committee. They are:

Bill 3, An Act to amend the Public Transportation and Highway Improvement Act with respect to the assistance that the Minister provides to municipalities. Mr. Yaka-buski. It was referred on December 15, 2005.

Bill 4, An Act to amend the Health Insurance Act. Mr. Mauro. Referred on November 3, 2005.

Bill 60, An Act to amend the Consumer Protection Act, 2002 to regulate the promotion and advertising of Internet gaming in Ontario. Mr. Leal. Referred on March 2, 2006.

Bill 110, An Act to proclaim Sexual Harassment Awareness Week. Mr. Hoy. Referred on June 22, 2006.

Bill 143, An Act respecting ground current pollution in Ontario. Mrs. Van Bommel. Referred on October 19, 2006.

The one government bill referred to the committee is:

Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act. Mr. Bryant. Referred on October 23, 2006.

I suggest that the subcommittee meet as soon as possible to decide on a timetable or schedule to work on Bill 103, which again is An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act.

**Mr. Kormos:** Chair, what about the other bills? You're but the Chair. Surely we have to include them in the development of a schedule or timetable.

**The Chair:** Maybe the subcommittee can discuss that as well.

**Mr. Kormos:** I just didn't want you to demonstrate any bias towards private members' public business.

**The Chair:** No, not at all. But those are the ones that are in front of us.

**Mr. Kormos:** Ms. Van Bommel's bill is particularly interesting.

**The Chair:** If there is no further business, I'll adjourn the meeting until further notice.

*The committee adjourned at 1056.*







## CONTENTS

Wednesday 6 December 2006

Election of Chair.....	JP-1019
Committee business .....	JP-1020

### STANDING COMMITTEE ON JUSTICE POLICY

#### **Chair / Président**

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Mr. Frank Klees (Oak Ridges PC)

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr. David Orazietti (Sault Ste. Marie L)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Mr. David Zimmer (Willowdale L)

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Research and Information Services



JP-37

JP-37

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**Legislative Assembly  
of Ontario**  
Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
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Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Tuesday 30 January 2007**

**Journal  
des débats  
(Hansard)**

**Mardi 30 janvier 2007**

**Standing committee on  
justice policy**

**Independent Police  
Review Act, 2007**

**Comité permanent  
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**Loi de 2007 sur l'examen  
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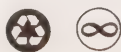
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICY

Tuesday 30 January 2007

COMITÉ PERMANENT  
DE LA JUSTICE

Mardi 30 janvier 2007

*The committee met at 1000 in room 228.*

**The Chair (Mr. Lorenzo Berardinetti):** Good morning. I'd like to call this meeting to order. This is a meeting of the standing committee on justice policy. The bill under consideration today is Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act.

We'll be holding public hearings today and tomorrow here in Toronto. Clause-by-clause will then be held the following day, Thursday, February 1, 2007. Please note that tomorrow and Thursday, the committee will be meeting in room 151, which is just one floor below here.

## SUBCOMMITTEE REPORTS

**The Chair:** Our first order of business is the motion for adoption of the subcommittee reports. I would ask for someone to read the first report into the record and move its adoption. Councillor Balkissoon—I'm sorry.

**Mr. Bas Balkissoon (Scarborough—Rouge River):** It's all right. We've known each other too long.

**The Chair:** I apologize. Mr. Balkissoon.

**Mr. Balkissoon:** Thank you. Your subcommittee considered on Wednesday, December 6, 2006 the method of proceeding on business before the committee and recommends the following:

(1) That the committee request authorization to meet and to travel within Ontario, if warranted, during the winter recess to consider business referred to the committee.

(2) That the subcommittee meet at a later date to decide its schedule.

(3) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Second, your subcommittee considered—

**The Chair:** We'll just stop at the first subcommittee report. Is there any debate on that? None? I'll now put the question. All those in favour? Opposed? The motion carries.

I now ask that the second report be read into the record and moved for adoption. Mr. Balkissoon?

**Mr. Balkissoon:** Your subcommittee considered on Wednesday, December 20, 2006 and Tuesday, January 23, 2007 the method of proceeding on Bill 103, An Act

to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 103 in Toronto on January 30, January 31, 2007. Dates and locations may change depending on numbers of requests made.

(2) That the deadline for those who wish to make an oral presentation on Bill 103 be 5 p.m. on Monday, January 15, 2007.

(3) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be called to make decisions regarding meeting dates and witnesses to be scheduled.

(4) That organizations and individuals appearing before the committee be given 20 minutes each in which to make their presentation, depending on numbers of requests made and subject to modification by the subcommittee.

(5) That an advertisement be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(6) That clause-by-clause consideration of Bill 103 be held on February 1, 2007. Additional days will be determined if required.

(7) That amendments to Bill 103 should be received by the clerk of the committee by 5 p.m. on Wednesday, January 31, 2007.

(8) That ministry staff provide a technical briefing to the committee for 30 minutes at the beginning of the public hearings.

(9) That the deadline for written submissions be the end of public hearings on Bill 103.

(10) That the research officer provide the committee with a summary of witness presentations, if possible, prior to clause-by-clause consideration of the bill.

(11) That the research officer provide the committee with background information on the LeSage report and on the handling of complaints.

(12) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(13) That the request for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(14) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Any debate?

**Mr. Peter Kormos (Niagara Centre):** I just want to acknowledge the material provided by Mr. Fenson and Ms. Drent. Very valuable, especially the comparison by Ms. Drent of the LeSage recommendations and the respective provisions in Bill 103. Thank you kindly.

**The Chair:** Duly noted, thank you. Any other debate? None? Is there a motion to adopt?

**Mr. Balkissoon:** So moved.

**The Chair:** All those in favour? Opposed? Carried.

## INDEPENDENT POLICE

### REVIEW ACT, 2007

#### LOI DE 2007 SUR L'EXAMEN INDÉPENDANT DE LA POLICE

Consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act / Projet de loi 103, Loi visant à créer le poste de directeur indépendant d'examen de la police et à créer une nouvelle procédure de traitement des plaintes du public en modifiant la Loi sur les services policiers.

## MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** We start public hearings today with staff from the Ministry of the Attorney General who will provide a technical briefing to the committee.

Good morning. You have 30 minutes for your presentation. You may use the entire 30 minutes or use less time and allow members a chance to ask questions. Please ensure you state your name for the record, and please proceed.

**Mr. John Twohig:** Thank you. Good morning, Mr. Chair, and members of the committee. My name is John Twohig and I'm the senior counsel with the policy division of the Ministry of the Attorney General. Appearing with me this morning is Graham Boswell, who is counsel with the policy division also at the Ministry of the Attorney General.

Just by way of overview, Bill 103 would amend the Police Services Act, the PSA, to provide for a new police complaints system centred around an independent police review director, the IPRD. The proposed IPRD would be responsible for the intake of complaints and determining who should investigate: the relevant police service, another police service or the IPRD itself. Complainants could still choose to go directly to the police if preferred. Following investigations, chiefs of police could refer matters to a disciplinary hearing if there are reasonable grounds to believe misconduct or unsatisfactory work performance had occurred.

The hearing is conducted by hearings officers and appeals to the renamed Ontario Civilian Police Commission would continue. Informal voluntary resolution would be available at any time. The province would set standards for hearing officers.

Policing in Ontario and the Police Services Act: Provincial and municipal policing in Ontario is provided by the Ontario Provincial Police and approximately 60 municipal police forces. There are approximately 22,000 sworn municipal and OPP officers in Ontario. These police services and officers are subject to the PSA. The PSA deals with: part I, responsibility for police services; part II, the Ontario Civilian Commission on Police Services; part III, municipal police services boards; part IV, police officers and other police staff; part V, complaints; part VII, special investigations; part VIII, labour relations; part IX, regulations and miscellaneous; and part X, court security.

A brief history of police complaints in Ontario: An appropriate system for handling public complaints about the police requires a balancing of the interests of the public and the police. In the 1970s, there was virtually no civilian involvement in the complaints process. In 1981, an independent police complaints commissioner, the PCC, was created, with jurisdiction limited to Toronto. The Honourable Sidney B. Linden was the founding PCC. The PCC's jurisdiction was expanded to the entire province in 1990. It operated until 1997, when it was replaced by the current system.

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The current complaints process: Currently, there is no independent civilian complaints office. Complaints about the police are made to the police service complained about. The police service complained about conducts an initial screening of the complaint and investigates the complaint as necessary. If the investigation reveals potential misconduct or unsatisfactory work performance, disciplinary action may be taken. In serious cases, a hearing may be convened pursuant to the PSA. Hearing decisions may be appealed to the commission.

**Mr. Graham Boswell:** Just to give you an overview of the LeSage review, in June 2004 the government asked the Honourable Patrick LeSage, former Chief Justice of the Superior Court and former chief prosecutor of Ontario, to conduct an independent review of the police complaints system. Mr. LeSage's mandate was to review the system to ensure that it was fair, effective and transparent. He consulted very widely across the province with police, community groups and the general public and released his report in April 2005. Mr. LeSage made 27 recommendations centred around the creation of a new independent body to administer the public complaints system. The Attorney General held follow-up meetings with key stakeholders between June and November 2005.

On April 19, 2006, the government introduced Bill 103, tracking the LeSage recommendations. Bill 103 is intended to foster confidence in the provision of police services by creating a more independent and transparent police complaints system centred around a new IPRD.

Key components of Bill 103: Section 8 proposes a new part II.1 of the PSA. Section 10 proposes a new part V of the PSA.

The proposed part II.1 would provide for the appointment of the IPRD and set out the responsibilities and powers of the director.

Under the proposed part V, the current section dealing with complaints would be repealed and replaced with a new complaints and disciplinary proceedings section.

In terms of the sections establishing the IPRD, under the proposed section 26.1, the IPRD would be appointed by the Lieutenant Governor in Council, on recommendation of the Attorney General. The IPRD could not be a police officer or a former police officer. Employees of the IPRD would be appointed under the Public Service Act and they could not be serving police officers.

There are two main types of complaints, both currently under the Police Services Act and under Bill 103. These are policy/service complaints and conduct complaints. The IPRD would review complaints to determine which category they fit into, pursuant to the proposed section 59.

In terms of a limitation period, the IPRD would have discretion to deal with complaints beyond the current deadline of six months. That would be set out in the proposed subsection 60(2).

The IPRD would be able to decline to deal with a complaint if the complaint meets one of the following criteria, which are under the proposed subsection 60(3): if the complaint is frivolous, vexatious or made in bad faith; if it could be more appropriately dealt with under another act or law; or if it is simply not in the public interest to deal with the complaint, having regard to all the circumstances. The IPRD could also decline to deal with policy/service complaints where the policy or service did not have a direct effect on the complainant.

The process for internal disciplinary action initiated by chiefs of police would not be significantly affected.

In terms of third party complaints, it's important to note that under the current PSA, third party complaints are not allowed; i.e., complaints from individuals who are not directly affected by police conduct. Bill 103 would allow third party complaints where they meet certain criteria.

Under the proposed subsection 60(5), the IPRD would have the power to decline to deal with a complaint if the complainant is not: a person at whom the conduct was directed; a relative or friend of the person at whom the conduct was directed and who suffered some sort of loss, damage, or distress; a direct witness; a person who possesses things or knowledge constituting compelling evidence of misconduct that would likely be admissible in court.

**Mr. Twohig:** The handling of policy/service complaints: The IPRD would refer policy/service complaints as follows:

—Complaints about municipal police policies or services would be referred to the municipal chief. This can be found in proposed subsection 61(2).

—Complaints about local OPP policies would be referred to the local detachment commander. This is found in proposed subsection 61(3).

—Complaints about OPP services or provincial policies would be referred to the OPP commissioner. This is found in proposed subsection 61(4).

In the case of municipal policy/service complaints and complaints about local OPP policies, complainants would have the right to ask the appropriate police services board to review the disposition of the complaint.

Enhanced provisions would ensure that all policy/service complaints would be the subject of a written report and complainants would be notified of the disposition in all cases.

**Investigation of conduct complaints:** Under proposed subsection 61(5), complaints about the conduct of officers other than chiefs and deputy chiefs may be (a) referred for investigation to the chief of police in charge of the officer to whom the complaint relates, or (b) referred to another chief of police for investigation, or (c) retained by the IPRD for investigation.

When determining who investigates, the IPRD would be required to consider the nature of the complaint and the public interest. This can be found in the proposed subsection 61(6).

When referring complaints to police for investigation, the IPRD would be able to provide direction on the handling if required.

**IPRD investigations:** The proposed section 26.5 would allow the IPRD to appoint investigators. The IPRD and investigators would have the powers of a commission under part II of the Public Inquiries Act, the PIA.

The IPRD investigators would have search and seizure powers for the purposes of complaint investigations. Search and seizure powers were available to the former PCC. Search and seizure powers are available to a wide variety of regulatory bodies in Ontario. The proposed investigatory powers have been drafted with an eye to balancing the need for effective investigations with the rights of officers.

**Part II, Public Inquiries Act powers:** The IPRD and appointed investigators would have the powers of a commission under part II of the PIA. Part II PIA powers include the ability to summon witnesses to give evidence on oath or affirmation, and the ability to require production of documents and other things required.

Part II of the PIA provides protection against self-incrimination. Witnesses giving answers that incriminate them or establish liability shall be deemed to have objected to answer, and no answer given is receivable against them in subsequent civil proceedings. Witnesses shall be cautioned that they have the right to object to answer any question pursuant to section 5 of the Canada Evidence Act, which provides protections against subsequent use in criminal proceedings.

**Searches of police premises,** proposed section 26.6: Investigators may enter police premises on notice to the chief of police or detachment commander. The IPRD powers on entry include: (1) to require production of

records, things, data or information related to the investigation; (2) to search for the above; (3) to use data storage, processing or retrieval devices or systems to obtain the information requested. Persons are obligated to assist an investigator, and no force may be used.

Proposed subsection 26.6(6): A justice of the peace or a judge may issue an order authorizing entry and search where there are reasonable grounds to suspect that an investigator has been prevented from exercising the previously noted rights of entry or is likely to be so prevented.

1020

**Mr. Boswell:** In terms of searches of other premises, you should note that under the proposed section 26.7, a justice of the peace or judge may issue orders in relation to a place other than police premises where satisfied that the investigation relates to the conduct of a police officer. The justice of the peace or judge must also be satisfied that there are reasonable grounds to believe that the conduct constitutes misconduct or unsatisfactory work performance. Further, there must be reasonable grounds to believe that there is in the place a record, thing, data, or information related to the investigation. Finally, it must be in the best interests of the administration of justice to issue the order, having regard to all relevant matters, including the nature of the place. A justice of the peace or judge would have to specifically authorize entry into a dwelling, and a search order could only be exercised between 6 a.m. and 9 p.m. unless the order specified otherwise.

There is a return process set out as well. Receipts must be given for anything removed during any search. Those records or things may of course be detained. The records or things must be returned within a reasonable time if they are no longer necessary, however. Where a record or thing is removed during a search of non-police premises, the investigator must make a report to a justice of the peace or judge. At that time, the judge or JP would be authorized to order that the thing be returned. Any person having an interest in a record or thing detained may bring a motion for access to it or for its return. Orders made upon such motions may be appealed in the same manner as appeals of offences commenced by certificate under the Provincial Offences Act.

In terms of conduct complaints post-investigation, following police investigations a written report would be submitted to the relevant chief of police. The chief would take no further action if he or she determined the complaint to be unsubstantiated. Where a chief believed on reasonable grounds that misconduct or unsatisfactory work performance occurred, he or she would then order a hearing. However, if the misconduct or unsatisfactory work performance was determined to be not of a serious nature, the matter could be resolved informally if officer and complainant consent. A police chief's decision that a matter is unsubstantiated or is not serious could be reviewed by the IPRD. Where the IPRD conducted the investigation, the IPRD would determine whether or not the matter was substantiated and whether or not it was of a serious nature and submit a report to the chief of police setting that out.

In terms of complaints about chiefs, deputy chiefs, the OPP commissioner and the OPP deputy commissioners, there is a different process in place. Complaints about municipal chiefs and deputy chiefs would be referred to the respective police services board for an initial review. The police services board would then ask the IPRD to cause the complaint to be investigated, if necessary, and the IPRD would then report back to the board. Where the IPRD believes that misconduct or unsatisfactory work performance had occurred, the police services board would hold a hearing or it would refer the matter to the commission for a hearing. Complaints about the OPP commissioner and deputy commissioner would be referred to the Minister of Community Safety and Correctional Services.

Disciplinary hearings would continue to be conducted by hearing officers, but Bill 103 would allow regulations to be created setting qualifications, conditions or requirements for those hearing officers. Currently, officers or retired police officers of the rank of inspector or higher can conduct hearings, as can judges or retired judges. Bill 103 would allow regulations to prescribe other persons or classes of persons who would be able to conduct disciplinary hearings. The disciplinary hearing results could still be appealed to the commission, but most appeals to the Divisional Court would be eliminated.

There are some changes in relation to penalty and offence provisions. Certain disciplinary penalties would now be combinable—for example: demotion and forfeiture of pay. New offences would be created, namely harassment, coercion or intimidation in relation to a complaint. Intentionally hindering or obstructing or providing false information to the IPRD or to an investigator would be an offence. Similarly, attempts to do either of the above would be offences as well. No prosecutions of these offences could be commenced without the consent of the Attorney General.

In terms of regulation-making power, there is regulation-making power set out in proposed subsection 135(1). Regulations could be made setting out a complaint process that would allow complaints to be made directly to the police. Regulations could establish procedural rules related to the IPRD powers, duties and functions. Regulations could establish additional persons or classes of persons who may function as hearing officers. Regulations could also set standards for those hearing officers.

One other issue—and this isn't specifically addressed in the slides: First Nations policing in Ontario is provided pursuant to tripartite agreements between various First Nations, the federal government and the province. First Nations constables are not included in the definition of "police officer" under the PSA. As such, First Nations constables are not subject to part V of the Police Services Act. That said, First Nations police are required to provide complaints and oversight mechanisms. Although First Nations policing is not explicitly noted in Bill 103, Bill 103 is designed to allow First Nations police who wish to find arrangements with the IPRD for complaints

processing to do so. Any arrangements would, of course, require extensive consultations with First Nations, the First Nations policing community, the Ministry of Community Safety and Correctional Services and the federal government.

In terms of next steps, if the Independent Police Review Act, 2006, is passed by the Legislative Assembly, an implementation phase would commence. Next steps would include appointing an IPRD, designing and operationalizing the new directorate and creating necessary regulations. Obviously, liaising with the community and the police about the above would also be of the utmost importance.

I think that wraps up our presentation. We can take any questions you may have.

**The Chair:** Thank you. That leaves us just over 12 minutes of time. We'll start with the official opposition.

**Mr. Robert W. Runciman (Leeds–Grenville):** How much time do we have? About four minutes each? Is that what you're saying?

**The Chair:** That's about four minutes per party.

**Mr. Runciman:** Thank you for the briefing. I'm just looking at the next steps. You're talking about appointing an IPRD. How would that process work? Could you give us an indication of how you're going to search for someone to fill this position and what the processes would be? Would it be an order-in-council appointment subject to review by government agencies? Just give us an idea how that process will evolve.

**Mr. Boswell:** It would certainly be an order-in-council appointment, obviously. I don't think we really have any specific information on how that process would play out, though.

**Mr. Runciman:** If you look at all of your next steps, do you have any kind of a cost forecast for this process?

**Mr. Boswell:** I believe that the cost—and these are only preliminary estimates—would be approximately \$1.3 million in terms of start-up, and ongoing would likely be in the area of \$6 million to \$8 million per year for staff, offices etc.

**Mr. Twohig:** I would add, Mr. Runciman, that in coming to those estimates, we are guided in part by the cost of the previous PCC. We're trying to project what we think would be the number of complaints. I believe also we did look at the English experience to see how their system unfolded. So this is how we reached those projections.

**Mr. Runciman:** When you say you're trying to project the number of complaints, what conclusion did you reach in terms, say, of what we currently deal with? Are you looking at some marginal increase, or what did you project?

**Mr. Boswell:** There would probably be a somewhat significant increase in the first year or so. I think that's the experience that they had in the UK, and I believe it was the experience that Ontario had when it moved to a province-wide PCC back in 1990. That said, the numbers seemed to decline somewhat after that and stabilize.

1030

**Mr. Runciman:** When you say "significant," are you talking about a 50% increase, a 100% increase?

**Mr. Boswell:** I really don't think I could—

**Mr. Runciman:** Your colleague said that you based your cost estimates on a projection of the number of complaints, so there must have been something. You just indicated there was.

**Mr. Boswell:** Just simply, I don't have the numbers right at hand. It certainly wasn't 100%.

**Mr. Runciman:** We'd appreciate you getting back to us with it because your colleague indicated that that projection was available and you based your cost estimates on it.

With respect to the IPRD, there was a column in the media today—Christina Blizzard in the *Toronto Sun*—equating this position to be parallel to that of the Ombudsman. Do you share that view, that this position would be parallel to that of the Ombudsman of Ontario?

**Mr. Boswell:** Certainly it seems to me like it's a specialized Ombudsman role. The Ombudsman doesn't have jurisdiction over police complaints and, as I understand, has not since 1981.

**Mr. Runciman:** That's not my question. My point was: Is it parallel to that of the Ombudsman? The Ombudsman, as you know, is an officer of the assembly. What you're talking about here, I gather, is what I would describe as a political appointment versus an independent officer of the assembly. What I'm trying to get from you is some clarification if you agree with the contention that this position would be parallel to that of the Ombudsman.

**Mr. Twohig:** I would think that the significant difference is just what you mentioned. This officer reports to the Legislature through the Attorney General rather than the Ombudsman, who is an officer of the Legislature and reports directly to the Legislature. In that respect they're different. In many other respects some people might say they're the same.

**Mr. Runciman:** I guess—

**The Chair:** That's the time.

*Interjection.*

**The Chair:** Unfortunately.

Mr. Kormos?

**Mr. Kormos:** Thank you, gentlemen. Section 58, subsection (2), paragraphs 5 and 6: Why can't a police officer complain to the director about the conduct of another police officer in that same service?

**Mr. Boswell:** I think you're referring to concerns about whistle-blowing and that sort of thing. As I understand it, whistle-blower protection would be provided to the OPP under the recent Bill 158. In terms of municipal police services, it's simply not something that we were in a position to deal with in Bill 103.

**Mr. Kormos:** I'm not talking about whistle-blower protection. You're barring—correct me if I'm wrong—a member of a police service from making a complaint about another member of that police service to the director. We're not talking about whistle-blower protec-

tion here. You're barring that police officer or employee from doing that. Why?

**Mr. Boswell:** I think one of the reasons for that would probably be: This is a public complaints process that is set out in the bill. Police officers, as I understand it, can make a complaint. If an officer in one jurisdiction had a complaint about an officer in another, he could make a complaint about that person, but presumably, if the officer has a complaint about his or her own police service, they would go through some sort of internal process.

**Mr. Kormos:** Why would you bar that officer access to the independent director, the arm's-length director? If a police officer has concern about, let's say, a malignancy within his own police service, surely the independent arm's-length director is a suitable destination for that concern if, in fact, the concern is about a malignancy that could well interfere with, impede or obstruct that police officer's complaint. Why are you barring access by that police officer to the director? Not you; the government.

**Mr. Boswell:** I guess one of the answers would be: It was not an issue that was addressed in the LeSage recommendations. Bill 103 is about implementing the LeSage recommendations. It is not a wholesale review of the Police Services Act or even the internal complaints process.

**Mr. Kormos:** All right. Let's move to section 97. Why—or, rather more significantly, why not—Ombudsman oversight?

**Mr. Boswell:** I guess our response is basically that since 1990, the Police Services Act has provided that the Ombudsman does not have jurisdiction to get involved in complaints about the police. The Independent Police Review Act wouldn't change that.

**Mr. Kormos:** Pardon me. See, I haven't got a whole lot of time. We're not talking about the Ombudsman getting involved in complaints about the police.

**Mr. Boswell:** Well, perhaps indirectly.

**Mr. Kormos:** We're talking about the Ombudsman getting involved about the director and his or her office—far different from complaints about the police—or police officers appealing to the Ombudsman who may feel that they weren't treated fairly by the director and his or her office. Why?

**Mr. Boswell:** I guess our view on that is that the independent police review director would play an Ombudsmanlike role in relation to complaints about the police. The independent police review director reports to the Attorney General. It would be an arm's-length body. Some of the feeling on this is that making the director subject to the Ombudsman could add an unnecessary layer of oversight and could create some inefficiencies in the new system. It would basically be like having an oversight system for an oversight system, and that's—

**Mr. Kormos:** Yeah.

**Mr. Twohig:** And again, Mr. Kormos, this bill is about implementing Mr. LeSage's report, and I don't believe he addressed that, nor were submissions made to

him, in the exhaustive consultation he undertook, about that aspect.

**Mr. Boswell:** It's also important to note that IPRD decisions would be subject to judicial review by the Divisional Court as well.

**The Chair:** That's the four minutes.

**Mr. Kormos:** Thank you kindly.

**The Chair:** I'll move on now to the government. Mr. Zimmer.

**Mr. David Zimmer (Willowdale):** The idea behind the legislation is to ensure that serious complaints and complaints that should be looked into are dealt with, while at the same time ensuring, as you've said, that frivolous and vexatious and inappropriate complaints don't clog up, clutter up, the system. Can you give us your thoughts or observations on how this process of screening out the vexatious and inappropriate complaints that are just designed to be mischievous is going to play out and how you've struck the right balance between screening out inappropriate complaints and proceeding with complaints that should be heard?

**Mr. Boswell:** Sure. I think one of the issues to keep in mind is that currently there are criteria that allow frivolous, vexatious or bad-faith complaints to be struck out at an early stage. I don't think many complaints fit into that category, but there certainly are some that do.

We would add some new categories in Bill 103 if it's passed. Complaints could be struck out if they could be more appropriately dealt with under another act or law and, I think even more significantly, complaints could be struck out if they are not in the public interest, having regard to all the circumstances. One of the reasons behind having a criterion like that is as follows: Lots of individuals may make a complaint where they are not being frivolous, they're certainly not being vexatious, they're certainly not acting in bad faith, but they simply may not understand police procedures. The fact is that it can sometimes be quite offensive to those complainants to have their complaints struck out on the grounds of being frivolous or vexatious. I think "not in the public interest" would allow the new IPRD to deal with complaints in a more appropriate manner.

**Mr. Zimmer:** Am I correct that if someone was unhappy with how IPRD categorized a complaint—that is, they said it's not in the public interest or it's frivolous or vexatious—there would be a review to Divisional Court of that decision?

**Mr. Boswell:** There would be no statutory right of appeal. I couldn't say for sure how it would play out in the courts, but certainly there's no privative clause there designed to limit judicial review.

**Mr. Zimmer:** Thank you very much.

1040

**The Chair:** Thank you. That completes the questions. I wonder—

**Mr. Runciman:** On a point of order, Mr. Chair: just to reiterate the request for the information. I think it would be helpful. The witnesses indicated that the cost estimates were based on projections of complaints for the future. If we could have that information provided.

**The Chair:** Can you provide that to us, then?

**Mr. Twohig:** We'd be happy to. We know the number of complaints that the PCC handle; we know, from the British experience, the increase that they saw. So we put those two together, and we can provide that.

**The Chair:** And would that be by the end of the day, perhaps, or sometime tomorrow morning?

**Mr. Boswell:** Perhaps tomorrow, if that's possible. We can try for the end of the day.

**The Chair:** Thank you.

**Mr. Kormos:** On a point of order, Chair: Again to legislative research, I'm at a loss, because I can't find anything where Mr. Bryant says that this bill is about merely implementing the recommendations of LeSage. I would ask legislative research to please assist in that regard and locate comments by the Attorney General or other members of the government that indicate that the sole function of Bill 103 was to be a vehicle for the recommendations of Judge LeSage and nothing more.

Sorry, Ms. Drent. It's early in the day, but I know you'll rise to the occasion.

**The Chair:** Thank you. We'll try to stay on schedule here. Thank you, gentlemen.

## POLICE ASSOCIATION OF ONTARIO

**The Chair:** The next scheduled deputant is the Police Association of Ontario. If you could please come forward and identify yourselves.

Good morning. You can begin your presentation. You have 20 minutes.

**Mr. Bruce Miller:** Good morning, and thank you, Mr. Chair. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. With me to my left is Karl Walsh, the president of the Ontario Provincial Police Association. Beside me on my right is Bob Baltin, the president of the Police Association of Ontario, and on the far right is Mr. David Wilson, the president of the Toronto Police Association.

**The Chair:** Welcome.

**Mr. Miller:** Also with us today in support of our position are association leaders from across the province, including the following police associations: the Brantford police association, the Brockville police association, Durham regional, Halton regional, Hamilton, Hanover, London, Niagara region, North Bay, Ottawa, Peel regional, Peterborough, and the Waterloo Regional Police Association.

The Police Association of Ontario represents over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. Our association is on record as supporting civilian oversight of policing. We have worked closely with successive governments over the years to ensure that the various oversight systems in place have the confidence of both the members of the public and the members of police services. We were full participants in the review of the current system of police complaints by retired Chief Justice Patrick LeSage.

Police personnel in Ontario are highly trained professionals. Our job is to identify, respond to, and deal with people engaged in unlawful activities.

Police personnel are currently subject to rigorous public oversight. This oversight function is provided by members of local police services boards; elected municipal and provincial officials; special-purpose bodies, including the special investigations unit, the Human Rights Commission, and the Ontario Civilian Commission on Police Services; and coroners' inquiries, public inquiries, and criminal and civil courts.

Ontario's system of civilian oversight is based on best practices available from across the country. The PAO believes that an effective and transparent public complaints system must satisfy reasonable members of both the public and police communities. Ontario's system of oversight must:

- ensure access to the complaints process for all Ontario citizens;
- provide fairness to all parties;
- provide meaningful, structured opportunities for the informal resolution of complaints; and
- have as its core goal remedial, as opposed to punitive, measures.

We believe that Ontario's present civilian oversight system offers a strong foundation for moving forward. Building on the merits of the current system and making improvements only where necessary sends an important signal to members of the public that, by and large, Ontario's system of civilian oversight is working.

The Police Association of Ontario supports the principles embodied in Bill 103. The PAO believes that the legislation can be strengthened and improved by addressing several key issues.

First and foremost are amendments that we strongly believe are needed to the informal resolution process. The proposed legislation will change both the police complaints system as well as the entire discipline process for police officers. Bill 103 will allow a chief of police to informally discipline an officer without holding a hearing if both the officer and, in the case of a public complaint, the complainant agree.

This informal discipline process for officers must explicitly include a representative role for the local police association. It is common practice in employee-employer relationships that a union or association that represents employees has an expressly defined representation role in the discipline process. Indeed, unions have "carriage" rights for grievances that challenge employer discipline.

While police associations should be entitled to similar grievance provisions, we have opted instead to advocate for an association role in the discipline process. Protecting the rights of front-line police officers through their association should by any reasonable standard be a hallmark of a fair, open and transparent process.

Association representation and assistance will help safeguard the interests of police officers and may assist the parties to arrive at an informal resolution. Members of the public understand that police officers, like other

members of the community, will seek trusted advice to help them navigate these difficult situations. We simply do not believe that the public interest is served by excluding the association from assisting its members during the informal resolution process.

The second area that we would like to address is the need for independent adjudication. Bill 103 does not address the long-standing failure of legislation concerning police discipline to provide for independent adjudication. This has been a significant shortcoming for decades in the discipline process for police officers.

Successive governments' legislative amendments to the police discipline process have failed to address the inherent unfairness of a process of discipline that has the chief of police directing the investigation, invoking the discipline process, appointing both the prosecutor and the hearings officer or, indeed, acting as the hearings officer, and then imposing the penalty. There is no similar process in any other employment environment or sector that permits such real or perceived bias.

The PAO acknowledges that the public has expressed concern that senior police personnel are appointed to oversee the actions of police officers. To ensure that a balance is maintained between protecting the interests of the public and police officers, we believe that independent adjudicators should be used as the alternative. These independent, professional adjudicators would improve public confidence that discipline matters are receiving due diligence while at the same time assuring police officers that no real or perceived bias exists.

The final area that we would like to comment on concerns third party complaints. These will be reintroduced to the public complaints process with the passage of Bill 103. The legislation will allow the independent police review director to exercise his or her discretion to deny hearing a complaint by a third party in circumstances where the third party is unrelated to the facts of the complaint or to the person directly affected. However, the director may also exercise his or her discretion to consider any third party complaint made by someone unconnected to the complaint.

1050

The PAO believes that the scope of inquiries under the discretion of the director should be confined to persons affected or to persons connected to the person to whom the facts of the complaint apply. Our proposal will permit the director to deal with a complaint from a person who, although not necessarily affected by the subject matter of the complaint, nevertheless has a connection to the subject matter of the complaint.

In closing, we would like to note that many important areas of the legislation will need to be addressed by regulation. We welcome the opportunity to be involved in the important process of developing the regulations. As an association committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight. We have put forward specific amendments that we feel will achieve

the balance between safeguarding the rights of officers and ensuring that public confidence in the complaint system is maintained. A copy of our recommendations is attached in the brief.

We appreciate the opportunity to provide input into this important process. We'd like to thank you for the opportunity to be here today, and we'd be pleased to answer any questions that you may have.

**The Chair:** Thank you. We have 12 minutes left, so four minutes per party. We'll start with the NDP.

**Mr. Kormos:** Thank you, gentlemen. I agree with you 100% in terms of your comments about the need for independent adjudication. One is hard-pressed to see the chief or a police officer whose last function was a managerial function perceived as neutral or impartial. I will be asking leg counsel to prepare amendments consistent with your proposal today. I suspect the Conservatives either will do the same or rely upon those same amendments, and I look forward to government acquiescing to this concern of yours.

This is not rocket science, like the guy on the cooking channel says. It's just so obvious, because we're not talking, Mr. Zimmer, about managerial rights, management rights in terms of internal discipline; we're talking about a complaint made by somebody, as it is, not even from within that same police force. It's so obvious, it seems to me it's—I'd love to hear your argument against it. If you can persuade me not to waste our time with the amendments, feel free to do so. I'd love to hear your arguments against that proposition.

Thank you, gentlemen.

**Mr. Miller:** We certainly appreciate your support, number one, because I've been fighting the flu. We do believe that independent adjudicators will only add confidence to the system and do away with any real or perceived bias that exists.

**Mr. Kormos:** It makes it better for everybody, for the police officer, for the complainant—the whole nine yards.

**The Chair:** We'll move on, then, to the Liberal Party.

**Mr. Bruce Crozier (Essex):** Good morning, Mr. Miller and colleagues. It's a pleasure to see you here. I've listened very carefully to the recommendations you've made, and the report you've given to us is complete, but I want to ask your opinion on something that isn't mentioned specifically in your report but has been brought up, in fact, already this morning. I expect that the Ombudsman, in appearing next, may bring this issue to the fore.

The Ombudsman has spoken publicly that he feels this independent police review director, and the act, should be subject to the Ombudsman's jurisdiction. Do you have any opinion or comment on that?

**Mr. Miller:** I think the important thing to realize is that Bill 103 is about civilian oversight and accountability. At what point do levels of oversight end? Are we going to put oversight in place for the Ombudsman's office? Are you going to keep adding layer upon layer?

This is nothing new in Bill 103. The Ombudsman's office has always been excluded from the legislation, and

that's something that has been recognized. Currently, as I mentioned before, we already have significant civilian oversight in place: members of local police service boards, elected municipal officials, the special investigations unit, the Human Rights Commission, the Ontario Civilian Commission on Police Services, coroners' inquiries, public inquiries, criminal and civil courts. At what time does this whole process end? We have elected members of the provincial Legislature who are, at the end of the day, the ultimate oversight body. We certainly have full confidence in those members to maintain the integrity of the system. So the short answer to your question, Mr. Crozier, is, we just don't see the need to keep extending oversight in what can become almost an endless process.

**The Chair:** Thank you. We'll move on to the Conservative Party.

**Mr. Garfield Dunlop (Simcoe North):** Thank you for being here. Based on the existing system we have today, in terms of numbers, you're representing 30,000 employees of police services. How many complaints would you get in the course of a year? Have you got that kind of data available?

**Mr. Miller:** That's probably a question that's better asked of ministry staff. I don't have that data available. We also have complaints against individual officers and complaints against policies, but certainly it would be limited. I couldn't tell you the exact number per year.

**Mr. Runciman:** Gentlemen, the witness following you, the Ombudsman of Ontario—and there's been some comment and some discussion with reference to that. I'm just wondering what the police association's position or view is with respect to the Ombudsman's interest here concerning the independence of the IPRD and its role, which you should be providing oversight for. Do you have a position on that?

**Mr. Miller:** Certainly with the IPRD, the independent police review director, being appointed by government, we see a strong independence there. We've seen it in other positions, such as the director of the special investigations unit, where there was a strong independence, and certainly Mr. Marin held that post for some time while he was there. But I have to go back to my original position—

**Mr. Runciman:** The SIU is subject to Ombudsman oversight.

**Mr. Miller:** Actually, it's my understanding from the act that the SIU is not subject to oversight by the Ombudsman.

**Mr. Runciman:** I'm basing it on a news column this morning.

**Mr. Miller:** It's something that was recognized during a previous Legislature, a process you were involved in back then as well.

At some point, oversight has to end. We have members who are subjects of public complaints. People aren't satisfied through that process; they turn around and go through the Human Rights Commission. They're not satisfied—

**Mr. Runciman:** Okay. You don't support it. That's all; I just wanted a "yes" or "no."

**Mr. Miller:** It just keeps continuing from one process to another.

**Mr. Runciman:** Thanks. We're talking about costs too, and we tried to get some figures from the previous witnesses. They seem to be feeling their way in the dark on what this is going to result in in terms of numbers of complaints. I guess I'm curious about the other indirect costs associated with this. We're talking about a surge; we don't know how big this surge will be. I direct this question to President Wilson, because I think a lot of this has been generated because of the Toronto Star's allegations about the Toronto Police Service a number of years ago. I'm just curious about what this means to your officers, because there is an implication here for taking officers off the street as well with these numbers of complaints, their time being devoted to other matters. Do you have any idea what the impact might be? We're looking at nothing specific, but there has to be some kind of an impact in terms of your service with a surge in complaints, which is being projected by the ministry.

**Mr. David Wilson:** Sorry, just to clarify, the surge in complaints having the effect of taking officers off the street? Is that the question?

**Mr. Runciman:** You have some idea, I would assume, in terms of time devoted—when a complaint is filed, obviously the officer has to be involved with respect to responding to that complaint and going through the process. I guess what I'm saying is, do you have any idea what this might mean to your ability to police the community?

1100

**Mr. Wilson:** As far as timelines, when the complaints come in, they are dealt with at the lower level. Obviously it can escalate through from the station level to internal affairs, and the chief has the ability to appoint—and then we go into the oversight outside the police service. As far as time commitments, we have officers assigned full-time to deal with the lower level complaints. The officers themselves have to respond within a certain time window, but I won't be able to give you a breakdown of how many hours per complaint at this point.

**The Chair:** Thank you. That uses up all the time. Thank you for your presentation.

## OMBUDSMAN ONTARIO

**The Chair:** We move on now to the next deputant, the Ombudsman of Ontario, André Marin. Good morning. Welcome to the committee. Please identify yourself for the record.

**Mr. André Marin:** I am André Marin, the Ombudsman of Ontario. Thank you very much, Mr. Chair. It's an honour to be here this morning and to share my office's thoughts on Bill 103.

I would like to say at the outset that the government of Ontario deserves credit for introducing Bill 103, which reforms the public complaints process and establishes the

office of the independent police review director, a new police oversight agency with wide-ranging powers to oversee and investigate police complaints.

Independent civilian oversight of the police enriches democracy by enhancing accountability. It also encourages our constabulary to constantly strive for best practices. The new government body, however, is just that: a government body. No matter how independent or arm's-length of the rest of government it may be, it reports back through a boss which is part of the executive branch of government.

In Ontario, we are fortunate enough to have an office reporting to the Legislative Assembly that provides independent oversight of all government bodies. Since 1975, all provincial ministries, boards, commissions and agencies, including the SIU, have been under the purview of the Ombudsman of Ontario, an officer of the provincial Parliament. For over 30 years, the process of oversight and accountability in this province has been principled, consistent and predictable. The Ombudsman has been there for tens of thousands of Ontarians, overseeing government involvement in every aspect of their lives, from womb to tomb, from cradle to grave, and standing up for them when they encounter problems.

But the office of the Ombudsman won't be there for anyone who might want to complain about the workings of this powerful new government body. As parliamentarians, that should disturb you. You should ask yourselves what causes the government to create an exception to this rule. What is the overriding and overarching principle that would support parking the province's main accountability vehicle at the door when we are talking about a new police review body? I can think of no such principle.

In that same vein, you should also ask yourselves: "If not the Ombudsman, who will oversee this new agency?" Indeed, the history of police complaints bodies in Ontario, as mentioned by the PAO a moment ago, is not a happy one and cries out for oversight. It is a history replete with allegations of bias, plodding bureaucracies and inefficiencies. These bodies have come in and out of vogue over the years, like the flavour of the month. We can only hope that history will not repeat itself. But if it does, who will investigate this new super-agency? Quis custodiet ipsos custodies: Who will guard the guards themselves? Who can the police or the public turn to if someone is dissatisfied with the delicate decisions this government body will make regarding complaints against the police? The answer is, no one. Buried deep in the entrails of this bill is a particularly troublesome provision, section 97, which provides that the Ombudsman Act shall not apply to the bill. This section effectively prevents the Ombudsman, and by extension the Legislative Assembly, from overseeing how this government body conducts its business of investigating complaints. This, in my view, is a grave flaw that must be addressed and corrected. It is bad news for the public in general and bad news for the police in particular, who would otherwise enjoy the benefits that come from independent oversight by an officer of Parliament.

Let me put it in context. The independent police review director will be a potent arbiter of disputes between citizens and the police, with extraordinary authority, including the ability to issue summonses, enter premises and seize evidence. The director will wield tremendous power over chiefs of police, all Ontario police officers and, of course, citizens who complain to him or her, but will enjoy a privileged enclave accountable only internally to the Attorney General of Ontario. No court can reach into the director's filing cabinet; no court can receive the director's testimony or try the director civilly. No complaint about the processes, practices and policies of the director's office can be independently investigated or resolved through shuttle diplomacy, and no recommendations can be made for reform in cases where a complaint against the director is valid.

As I stated at the outset, in Ontario, by default, every provincial government organization, whether it's the Ministry of the Attorney General, the special investigations unit, the coroner's office or even the soon-to-be-reinvigorated Ontario Human Rights Tribunal, is subject to the statutory oversight of the Ombudsman, who is an officer of the Legislature. It is the legislated function of the Ombudsman of Ontario to investigate and to make recommendations if a government body conducts its business in a way that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or just plain wrong. However, the independent police review director has been sheltered from this external and effective oversight.

Coming back to the fundamental question for you to ask yourselves as parliamentarians, what public policy would justify the removal of this government body from being accountable to you through the Office of the Ombudsman? Why should there be two different accountability regimes for the provincial government—one for the police complaints body and one for everybody else?

I have monitored with interest the debates in the Legislature over section 97. A member of the Legislative Assembly, speaking on behalf of the government, justified the section's existence on the basis that a similar provision existed in 1990 and, in any case, oversight still exists in the form of judicial review if someone is not happy with the decisions of the director. My answer to the first argument, with the greatest of respect, is, so what? If the whole rationale for passing this legislation is to provide a new complaints commission from the ground up, why would you feel compelled to hang on to a relic from the failed past? Why allow a provision that should not have been there in the first place to somehow muddle the present?

The exclusion of the Ombudsman in the Police Services Act is in fact an accident of history, carried over from the time when a police oversight body was initially created on a pilot basis for the Metropolitan Toronto Police in 1981. At that time, one of the primary reasons for excluding the Ombudsman was the municipal nature of the police force. When civilian oversight of police was extended throughout the province in 1990, this provision

was simply replicated without any further thought. It has existed not for sound public policy reasons, but solely by happenstance. It has managed to cling on, unchallenged, from one era to the next, from one Police Services Act to the next.

The Honourable Patrick J. LeSage's April 2005 Report on the Police Complaints System in Ontario, commissioned by the government, speaks for itself. At no time does the report recommend a break from the provincial accountability regime or the role of the Ombudsman in providing oversight on behalf of the Legislative Assembly. If, somehow in your deliberations, this honourable committee's final judgment on Bill 103 hinges on whether or not, as has been suggested by a government member, Mr. LeSage really intended for the Ombudsman to retain oversight of this body, I would suggest that you invite Mr. LeSage to come forward and testify before you. You will then be able to ask him the very question I have put to him and satisfy yourselves as to what he truly intended.

As for the argument that you don't need Ombudsman oversight because you can always go to court, this, with respect, is a red herring. You can always bring to court any government body on a myriad of issues. It's not a substitute for the role of the Ombudsman. Going to Divisional Court is a narrow and technical affair, a costly enterprise and an adversarial process; upon reflection, I am sure you will agree with me that that is not the answer you would want to provide to constituents who are unhappy with the course of their complaints to the IPRD.

You might be asking yourselves what happens in other provincial jurisdictions when dealing with oversight of police complaints. In Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Quebec and Saskatchewan, either the provincial Ombudsman or another specialized officer of Parliament has jurisdiction to intervene. In all of these jurisdictions, the respective Legislative Assembly retains the power and ability to involve itself in the investigation of complaints against the police through an officer of Parliament. If this bill passes, Ontario will have the dubious distinction of being the only jurisdiction where police complaints are outside the reach of parliamentarians; it behooves you to not let that happen.

What can you do? It's simple: Delete section 97 of the bill.

1110

**The Chair:** We have about nine minutes left, so there will be three minutes per party. We'll start with the NDP.

**Mr. Kormos:** I appreciate your participation here today.

**The Chair:** I'm sorry. I think the government is first.

**Mr. Kormos:** I was in your hands. I was simply being compliant—take it when you can get it.

**The Chair:** My apologies. Go ahead, Mr. Crozier.

**Mr. Crozier:** Something you brought with you this morning just struck me as I looked at it. On the letterhead and on this folder, it not only says "Ombudsman of

Ontario," but it also says "Ontario's Watchdog." Is that an official title?

**Mr. Marin:** It's not in the statute. It's the motto of the office.

**Mr. Crozier:** Did you establish that motto?

**Mr. Marin:** Yes.

**Mr. Crozier:** We'll get on to something more serious. You alluded to the fact that you feel Justice LeSage did not purposely omit the Ombudsman and your authority from his report. I'll go out on a little thin ice here, in that there is a newspaper report by Christina Blizzard in today's Sun that says, "Sources say LeSage didn't want the Ombudsman to have oversight because he wanted there to be some finality to decisions made by the independent police complaints process." That in fact was echoed by our first witnesses this morning. If that's the case, what would lead you to disagree with Mr. Justice LeSage?

**Mr. Marin:** I spoke to him directly. Secondly, I read the report. It's not in his terms of reference, and he was very careful in his report not to go beyond his terms of reference. I can assure you that the passage from the unnamed source in the Sun report does not reflect the conversation I had with him.

**Mr. Crozier:** What was your conversation with him?

**Mr. Marin:** It was a private conversation, but I can assure you that—

**Mr. Crozier:** No, you've entered that as a comment. What did he say in his conversation with you?

**Mr. Marin:** I can unequivocally tell you that the comment attributed to him in the Sun today is disingenuous, wrong and misleading.

**Mr. Crozier:** With all due respect, that's not the question I asked. What did he say?

**Mr. Marin:** He told me that it was not in his terms of reference. He told me that it was not an issue that he considered in writing the report and it's not an issue that was presented to him and it's not a question that he deliberated. If you want further clarification, I would ask you to invite him here.

I heard the testimony by the officials from the Ministry of the Attorney General. I disagreed with what they said. I've contacted the ministry and advised them that that wasn't Justice LeSage's comment and invited them to call him up and verify it. It suggests to me that that wasn't done, and I think to say that LeSage considered it and rejected it is wrong.

**Mr. Crozier:** Okay.

**The Chair:** Thank you. Let's move on.

**Mr. Crozier:** Time moves so quickly.

**The Chair:** I know, especially when we're having so much fun.

To the Conservatives.

**Mr. Runciman:** Welcome. With this limited time, I'd appreciate brief responses.

Clarification: The previous witnesses, the PAO, as I understood, said you do not have oversight with the SIU. Do you or do you not?

**Mr. Marin:** We do, and I want to add that I don't disagree with what the PAO stated in their official position. I think there's a misunderstanding of the role of the Ombudsman. We would not be investigating complaints against police once again. We'd be investigating the body that investigates police complaints.

**Mr. Runciman:** Thanks for that clarification.

One of the things the police are concerned about—and I share the concern—is this whole issue of timelines and leaving an officer twisting in the wind, for example, with no definitive end to this in sight. The fact that you might have the opportunity to review a decision, I gather, would encourage that kind of concern.

If you ultimately had this authority, would you also be supportive of some kind of deadline? There's a deadline in terms of a complaint that's embodied in this legislation. Would you also be supportive of some kind of finality to the process?

**Mr. Marin:** Absolutely. Time is of the essence in these cases because police officers' careers hinge upon how these things turn. Complainants need answers. I would refer back to examples given by the PAO about issues that concern them, including the example of too much discretion embodied in the discretion of the director in allowing third party complaints. Those are all typical Ombudsman issues: bias, delays, looking at evidence overlooked in adjudication, unfair/unjust processes. Just think MPAC.

**Mr. Runciman:** I have a final question. Your view with respect to third party complaints: I'm very concerned about the way the legislation is worded. I share the PAO's concern with respect to this. They're talking about a third party complaint. There has to be some connection with respect to the alleged offence and the person lodging that complaint. I'm just wondering what your perspective is on that.

**Mr. Marin:** I'm all in favour of providing proper criteria to exercise that discretion. Again, I would emphasize that if the office was overseeing this body, those are the kinds of complaints that we would be entertaining, whether there was an abuse of discretion. You can't go to Divisional Court with that. There would be no other outlet for anyone to consider remedies.

**The Chair:** Thank you very much. We'll move now to the NDP.

**Mr. Kormos:** Once again, thank you, sir. I appreciate your participation in these hearings. It was frustrating, because even at the very onset of today, speaking to ministry staff about section 97, the comment was made—and you've referenced this point of view—that we don't need yet another body overseeing the conduct of police. I had to respond and say, but that's not what the interest is in having the Ombudsman perform an oversight role with respect to the director and his or her office and process.

The impression is being created by some who oppose your proposition that you are but another level of appeal, so to speak, such that recourse to the Ombudsman can be used for dilatory purposes. Can you explain how you work and address that concern?

**Mr. Marin:** I think that if the Ombudsman had overseen the police complaints commission, it might still be around today. I could see that the Ombudsman could well be the best ally the police will ever have in ensuring that the bureaucracy is tight and operates the way it should.

I've talked about the lack of public policy reasons for the exclusion. I'd like to talk briefly about the public policy reasons for the inclusion. First is the extensive powers and discretion vested in that office. Second, the extensive immunities provided to the director. Third is that the director has only one master, and it's a political master. Fourth, it is inconsistent with the oversight mechanisms that we've set in this province.

The Office of the Ombudsman oversees hundreds of quasi-judicial tribunals and agencies. Why create this exception? It runs against the grain.

**Mr. Kormos:** Thank you, sir.

Chair, I move that this committee invite the Honourable Patrick LeSage to appear before it respecting Bill 103, or, in the alternative, provide written submissions regarding section 97 and the non-application of the Ombudsman Act to part V of the bill.

A written copy of that motion has been provided to committee members.

1120

**The Chair:** Do we need to vote on this motion?

**Mr. Kormos:** May I address it briefly?

**The Chair:** Yes.

**Mr. Zimmer:** Chair—

**The Chair:** Let him address it first, and then we'll allow some debate.

**Mr. Kormos:** It's a point of order, Mr. Zimmer.

**The Chair:** Let Mr. Kormos briefly speak to it.

**Mr. Zimmer:** I'm going to ask for a 20-minute recess. I don't know if it's appropriate to ask for that now or after.

**Mr. Kormos:** At the point of calling the vote, or now? Do you want one now?

**The Chair:** Let him make his submission, I would suggest with the greatest of respect.

**Mr. Kormos:** If I may, very briefly. Look, the Ombudsman has been very fair and very clear. If people indeed want to hide behind the robes of Patrick LeSage with respect to section 97 of the bill, so be it, but let's hear it from Patrick LeSage himself. Words are being attributed to him, perspectives are being attributed to him, rationales are being attributed to him in a way that may or may not be justifiable. It's a simple matter: Ask the man himself to resolve this concern. Apparently, there's a press report that would purport to present LeSage's perspective on section 97 in a particular way. Mr. Marin says that that's not quite the way he understands it, and I'm being very liberal in my interpretation of Mr. Marin's comments. Let's hear from Patrick LeSage. It's still up to the committee to decide whether or not, when it comes to section 97 and what it does with section 97—let's clear the air.

I'll tell you why—in the interests of Patrick LeSage as well, because it's not fair to him to have him caught up in

this little whirlwind, in this little storm of debate around the section. It's not fair to him at all to attribute to him things that he may not want to be associated with whatsoever. It would take but a few minutes to do that. It would clear the air, and as I say, people could then proceed with all the best available information. What a rational way to address legislation: to proceed with all the best available information. What a novelty that would be, wouldn't it, Chair?

**The Chair:** I'm not allowed to comment. Mr. Runciman?

**Mr. Runciman:** While the official opposition will support the motion, it seems to make eminent good sense to have Justice LeSage appear, and certainly reinforced by Mr. Crozier's concerns earlier with respect to Justice LeSage's views with respect to the Ombudsman having oversight here. So I don't see any difficulty proceeding with this.

**The Chair:** Mr. Crozier?

**Mr. Crozier:** Just a recommendation that may save the committee and delegation's time and so forth: If we could deal with this motion at a point in time, say, sometime after lunch, or whenever would be appropriate, those of us who want to discuss it could talk about it at lunch and we won't interrupt delegation time.

**The Chair:** Is that okay, Mr. Kormos?

**Mr. Kormos:** I have no qualms about that whatsoever. It's not an unreasonable—it's either that or have a 20-minute recess now, which means that people cool their heels in here when they've been waiting to make submissions.

**Mr. Crozier:** That's what I'm trying to avoid.

**Mr. Kormos:** I appreciate that comment by Mr. Crozier.

**The Chair:** So we'll deal with it sometime after lunch. Is that okay with everybody, then?

**Mr. Kormos:** Thank you, Chair.

**Mr. Crozier:** The first order of business?

**The Chair:** As the first order of business after lunch. Thank you, Mr. Marin.

#### TORONTO POLICE ACCOUNTABILITY COALITION

**The Chair:** We'll move on. The Toronto Police Accountability Coalition; Mr. Sewell.

Good morning.

**Mr. John Sewell:** Thank you, Mr. Chairman.

**The Chair:** You might want to just wait a moment; there's a lot of noise in the background behind you. I won't deduct it from your time.

Okay, you may proceed.

**Mr. Sewell:** The Toronto Police Accountability Coalition has been active in Toronto for the last six years, focusing on police policy issues. We've maintained, throughout our short life as a group, that a new complaints mechanism is absolutely necessary, and we were pleased that Mr. Justice LeSage was appointed to make recommendations on the matter. We believe that his pro-

posals were a good and strong step forward and we would be much happier if all of his recommendations had been incorporated into Bill 103. As it stands, Bill 103 is a modest improvement to the current complaints process, but to be completely fair and open with you, we don't think it's nearly as useful to the public as it might be. We don't understand why the government decided to omit some of the important changes proposed by Mr. LeSage.

Our comments will focus on just three changes we wish to see made to the bill. First, the need for an independent investigation: The bill does not guarantee that an independent investigation will be done. In fact, the assumption of the bill is that most complaints will be referred by the independent police review director to the police force involved and be investigated by that force, a process which hardly differs from the present situation. Since speed and early response are important to accurate investigations, this is a reason for concern. It is of little assistance to know that after the police have completed their own investigation, perhaps taking two or three months, the police report will be submitted to the director, who can then wonder whether the investigation has been done in a satisfactory manner. By that time, so much time has passed that it will be impossible to then expect another investigation to uncover what exactly occurred.

We believe that the bill should guarantee that in all but complaints determined "minor" by the director, an independent investigation should be undertaken. A minor complaint would be, as an example, that a police officer swore at somebody or used foul language. In all but those minor situations, we think an independent investigation should be undertaken, and we think that the appropriate amendment could be made to the bill—we're suggesting, in subsection 61(5) on page 13.

Secondly, the need for independent investigators: As most everyone knows, police culture is very, very powerful and makes it very difficult for an officer to speak out or take action independent of other officers. This is one of the reasons why independent investigation is so critical. That police culture also affects former officers, which is why Mr. LeSage had suggested that no more than half of the investigators be former officers. The bill contains no such limitation. It is silent about the percentage of investigators working for the director who are former police officers. We believe that to ensure reasonable independence of investigation, no more than one third of the investigators be former officers. We think that change could be made as well, and we suggest where.

The third area we wish to address is one of accountability. Mr. Justice LeSage had proposed local advisory boards responsible for public outreach and local accountability, generally acting as civilian overseers to the director. The bill contains no provisions for such boards. Instead, virtually all of the complaints process, including the extent to which the public knows about it, seems to depend on the decision of the director. Given the difficult experience in Ontario with complaints against the police,

it does not seem wise to leave the workings of the process in the hands of a single individual appointee.

Instead, local advisory boards consisting of community representatives should be appointed. These boards will not be competing with, nor their functions overlapping, existing police service boards whose job it is to manage local police forces. These boards would only be concerned with public access to, and the public legitimacy of, the complaints process. Appointments to these boards should be made by the Attorney General or by the cabinet, hopefully after consultation with local organizations. We think there's a place for that change to be made as well.

We think these three amendments are critical to the success of the bill. They're issues that Mr. Justice LeSage dealt with, and we think these changes should be made: first, a requirement of independent investigations; second, an assurance that the investigators will largely be independent and not infected with the police culture; and third, that there will be some accountability structures established.

Thank you very much.

1130

**The Chair:** Thank you. We'll begin with the Conservative Party. We have approximately 11 minutes, so four minutes per party.

**Mr. Dunlop:** Thank you very much, Mr. Sewell, for being here today. I just have one quick question, and that's the makeup of the coalition that you represent in terms of what organizations and the number of people you would be representing coming to the committee here today.

**Mr. Sewell:** I don't think we represent a lot of people. We have a steering committee of half a dozen people. We meet monthly. We hold public meetings a couple of times a year. We have an electronic bulletin that we send out to a mailing list. About 325 people have asked to be on that. We're just a small, little body that's trying to deal with police policy issues.

One of the great problems in Ontario and many other places as well is that people are not willing to speak out on police policy issues—politicians particularly, but most other members of the public aren't willing as well because they fear that they're going to be attacked or hurt by the police, and we have a lot of evidence of that. That's why we've got a relatively small organization. We've been around, as I say, for six or seven years.

**Mr. Dunlop:** When I asked a question earlier to the Police Association of Ontario, I didn't realize that sitting on our desk was a document that the research department had provided for us, dealing with all the different types of police complaints over the last two or three years in the province of Ontario for the different police services. I want to put that on the record and I thank legislative research for providing that to me. I didn't realize it was on my desk when I actually asked the question, and it may be information that you would like as well.

**Mr. Sewell:** Yes, I'd be delighted to see it. Is it available?

**Mr. Dunlop:** Yes, I think it is.

**Mr. Sewell:** If it is, I'll get a copy. Or if you can't, maybe somebody can e-mail it to me. Thank you very much.

**Mr. Runciman:** Chair, I'll continue, if we've got time. Thank you as well, Mr. Sewell, for being here. Some of the comments you make in your submission: I don't know how people reach this conclusion—it would be interesting to know the science behind it. But when you talk about the need for independent investigators—and I don't take issue with that—it's stronger than a suggestion. What's put down here essentially is a stated fact that so-called police culture affects former officers, so that you're recommending that only one third of the investigative staff be people who have some experience in policing and police investigations. I have difficulty with that in terms of competency and also, of course, with the basic assumption here that somehow a former police officer cannot approach a complaint from an independent perspective. Where do you get that? What's this based on?

**Mr. Sewell:** Let me say two things: Firstly, there are many individuals who are very capable of doing good investigations—many. You don't have to be a police officer to know how to do a good investigation. Lots of people do them all the time. It's not as though that's the only place we can choose investigators from.

The second thing is that there is a police culture. The "blue line" is something that people have talked about and written lots of books about, and there is this notion that police should stick together and shouldn't criticize their own. I think that's something that most everyone recognizes exists and it's a very powerful pressure on police officers. It shapes the way they think and the way they look at things. We know that from the individuals who do try and speak out. I certainly have run into officers who have, and the way they're penalized is really shocking.

I believe that culture shapes an individual, and while you might leave the organization, you're still going to think in that kind of way, just as the culture of being an accountant shapes your life after you stop being an accountant.

**Mr. Crozier:** Oh, now, be careful.

*Laughter.*

**Mr. Sewell:** I realize that—for the better, obviously, and that's all I'm saying. What we'd like to do is get away from that as much as possible. Since there are many other good investigators around, my feeling is that we should be saying, "Hey, let's hire them."

One of the reasons people say that you need former police officers or police officers themselves to do the investigation is because the police have such a powerful culture that they won't let others into. That's the whole problem, and that's the problem we have to get around. I happen to believe that it would be better for police officers if we could really explode that culture so it wasn't there. I think many new officers are appalled at this culture that they've had to absorb when they thought they

were going to go out and do good in society and they find they're part of this big organization. So that's a cultural thing. This mechanism isn't going to solve it, but it's something that we have to recognize. If we don't recognize it, we're going around with blindfolds.

**The Chair:** Thank you.

**Mr. Runciman:** Just to put on the record that I'm unconvinced and I think the dangers of having people who are not competent in very significant investigations that affect people's lives is a greater persuader for me.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you, Mr. Sewell. I have no questions, Chair.

**The Chair:** The government?

**Mr. Zimmer:** Thank you, Mr. Sewell, for your thoughtful presentation.

**The Chair:** Thank you, Mr. Sewell.

### HARVEY SIMMONS

**The Chair:** Our next deputant is Harvey Simmons.

**Mr. Harvey Simmons:** Good afternoon.

**The Chair:** Good morning, still.

**Mr. Simmons:** Thank you for the opportunity to appear before the committee. My name is Harvey Simmons. I'm appearing as an independent presenter, but I'm also a member of the Toronto Police Accountability Coalition. I have a brief presentation which hasn't been circulated, but I would like to make it available afterwards for copying.

My approach is slightly different from those of the previous presenters. What I did to prepare this was very simply look at complaints statutes in other jurisdictions to see whether there was anything that they had that perhaps Bill 103 could benefit from. I've arranged it in a series of brief statements of how other jurisdictions handle their complaints, with a series of suggestions that follow from that. I'd like to go through that very quickly.

First, British Columbia has a provision as follows: "If the police complaint commissioner suspects that the notice of withdrawal [of a complaint] may have been made under duress [the police complaint commissioner] must ... make reasonable efforts to determine if duress was involved."

The New South Wales Police Integrity Commission Act mandates the commissioner to "protect the safety" and to protect from "intimidation or harassment" any person assisting the commission in its investigation.

My recommendation is as follows: Given the past history in Toronto, and perhaps elsewhere in Ontario, of civilian complaints against police being withdrawn under suspicious circumstances, such a provision should be included in Bill 103.

By the way, British Columbia's legislation and the New South Wales legislation are referred to in Justice LeSage's report, although these particular provisions do not appear there.

On support and information for complainants, the BC statute says, "The police commissioner must make

available a list of support groups and neutral dispute resolution service providers and agencies" to "assist complainants with the informal resolution process." In other words, BC states that people who make complaints get some help in resolving the process from outside agencies.

My recommendation is that although Bill 103 does refer to helping people make complaints, there's no provision for arranging for assistance for people who wish to resolve their complaints during the informal process.

Extending the complaint time to 12 months: In BC, a complaint can be made up to 12 months after the incident. Neither the RCMP nor the New South Wales police place any time limit on filing complaints. By contrast, Bill 103 states that the IPRD "may decide not to deal with a complaint made by a member of the public if the complaint is made more than six months after the facts on which it is based occurred." In the interests of fairness and justice, perhaps the time for making a complaint might be extended under Bill 103 to more than six months, perhaps to a year or even beyond that.

Deadline for investigating complaints: In BC, an initial report has to be filed by their police complaint commissioner within 45 days after the initiation of an investigation, and follow-up reports after that. My recommendation is as follows: Bill 103, it seems to me—I may be wrong on this—is unclear on whether or not there is a deadline for investigating complaints within a certain deadline. The only provision I could find was that in investigating municipal force policies, the chief has to report within 60 days of a complaint. But it seems to me that this refers only to municipal force policies, not to individual complaints. My recommendation would be that if it doesn't exist—I haven't seen it—there should be some deadline whereby an investigator has to report to a complainant, say, within 45 days.

### 1140

Decision on not to deal with a complaint: Bill 103 states that the IPRD may "decide not to deal with a complaint made by a member of the public if, in his or her opinion ... the complaint is not in the public interest." My recommendation is as follows: If you look at the BC legislation, the term "public interest" only occurs when it is in the public interest to hold hearings or to open up public discussion. In other words, the term "public interest" in BC is the grounds for broadening, not restricting, inquiry. Why, then, would one leave it up to the IPRD to decide alone on what is or is not in the public interest, and why are there no grounds provided for a complainant to appeal against this decision?

One minor point is the clarification of the term "board." The Police Services Act stipulates that the term "board" refers to "a municipal police services board." However, in Bill 103 on at least one occasion, the term "board" refers to a complaints board—part V, clause 56 (1)(b)—and yet throughout Bill 103, matters are referred to boards. It's not clear, to me at least, whether when a matter is to be referred to a board under Bill 103 it refers

to a police services board or to that one mention of a board of complaints.

There are a couple of other things. I want to leave time for questions.

Specify contents of annual review: Under Bill 103, the IPRD must submit an annual review. The content of that review is not specified. If you look at the New York Police Department's Civilian Complaint Review Board, there's some specificity about what should be contained in the annual report. I think the same should be the case in Bill 103.

Finally, anonymity of complainant: The Los Angeles police state that they cannot guarantee anonymity to complainants. My recommendation would be that in fact Bill 103 should guarantee anonymity to complainants, the reason being that they not only might fear retaliation, but this is a multicultural city and I remember at least one instance of a person who complained to the police and was subsequently deported because she was under illegal status. I don't think the fact that in this case the person had some sort of immigration problem should militate against people laying complaints against the police.

There are other things in here that the members can look at when this is circulated, but I think I'll stop here. Thank you.

**The Chair:** Do you want to give a copy of that now to the committee clerk? Thank you. We will start with Mr. Kormos. Five minutes each.

**Mr. Kormos:** Thank you very much, Mr. Simmons. I appreciate your contribution. I'm looking forward to getting your submission so that I can read through it after having heard you submit it. Thank you.

**The Chair:** We'll move on to the government. Any questions? Mr. Crozier.

**Mr. Crozier:** Just a very quick question, and I think the printed copy of your report will give me, like others, a chance—you mentioned this referral to complaint boards, and I think you referred to a section of the act. What section was that? Do you remember?

**Mr. Simmons:** It's gone to be copied. You'll find it.

**Mr. Crozier:** That's one I'd like to have a look at, that's all.

**Mr. Simmons:** It does add to some confusion.

**The Chair:** We'll move on to the Conservatives. Mr. Runciman?

**Mr. Runciman:** Thank you for being here. You expressed your desire to see the protection of anonymity of complainants. I'm just curious. You cited the one example of retribution. Where can we get details? Was that proven to be the case or is this anecdotal?

**Mr. Simmons:** Yes. This was a newspaper article some months ago about a woman who made a complaint or was involved in a complaint and was later deported because of her immigration status.

**Mr. Runciman:** Was there a clear linkage between them? Was this ever proven, or is this just an—

**Mr. Simmons:** Yes, I think so. I must admit, I don't have the actual facts, but the principle of anonymity

seems to me to stand above this question of whether or not there have been individual incidents.

**Mr. Runciman:** I don't argue with you with respect to that, just the fact that you're basing your case on an example that obviously is an allegation.

**Mr. Simmons:** Yes.

**Mr. Runciman:** Okay. Thank you.

**The Chair:** Thank you, Mr. Simmons, for your presentation.

## CANADIAN CIVIL LIBERTIES ASSOCIATION

**The Chair:** We'll move right along, then, to the Canadian Civil Liberties Association, Mr. Alan—

**Mr. Alan Borovoy:** Try Borovoy.

**The Chair:** Borovoy. I should know the name; I've read it so many times. My apologies.

**Mr. Borovoy:** Thank you very much. I appear here on behalf of the Canadian Civil Liberties Association. A document, I believe, had been pre-circulated to you.

This province has endured a system of police complaints for almost a decade that we believe is deeply flawed. In fact, I describe it as "cop heavy," and that is that the police have dominated virtually every stage of the process. The problem with that is that no matter how fair in fact the handling of any complaint might be, there's no way it can appear fair, because those police officers have departmental interests to protect and collegial relations to maintain. This is a classic conflict of interest. Everywhere else in our society, we are making bold moves to eliminate or at least reduce conflicts of interest. It is critical that we do so here as well.

Bill 103 makes a number of welcome moves in this direction, and to this extent, the Canadian Civil Liberties Association commends the initiative. Unfortunately, however, there is still more police domination of the process than there ought to be. Even though there is a system in place now for some kind of external review of those police decisions, the great risk you are likely to encounter is the number of people with grievances against the police who will not file complaints because they don't want to put themselves through a police-dominated complaint handling system.

On that basis, the Canadian Civil Liberties Association is proposing a different approach, or at least an amendment, at each stage of the process. We start with investigations. The bill provides for a continuation of the initial investigations by police themselves. It does provide for alternatives, but in our view, this is a flawed way to begin. We are concerned that these investigations will be perceived as serving the interests of the police. As I say, no matter what the facts are, that is likely to be the perception. There will be apprehension that evidence may be concealed, ignored or even distorted. That's going to be the suspicion that people will have when you have that kind of situation. Again, you're not likely to have all the grievances come forward when people know that they

have to deal with colleagues of the very officer against whom they have a complaint.

1150

I notice that there is a provision for referring these investigations to another police department. The difficulty with that was answered by an RCMP sergeant way back at the time of the Donald Marshall inquiry in Nova Scotia. You'll remember that this man was jailed for a murder he did not commit because of what appeared to be a flawed investigation by the Sydney, Nova Scotia, police. The RCMP was trying to explain on the stand why they pulled their punches when they reviewed the Sydney police investigation. The RCMP officer said, "Police officers are like a fraternity. You feel a certain loyalty to one another." Now, that is when one police force is investigating another, and that's why that system is not adequate either, all of which leads me to the recommendation that the bill be recast so that the initial investigations will generally be done by the director and the director's staff rather than by any police force.

You then come to the point where, once the investigation is finished, there is an evaluation of it to determine whether the matter is going to be treated as a serious matter, the subject of a hearing; a non-serious matter, the subject of attempted informal resolution; or whether it will be dismissed as unsubstantiated. Who makes the initial decision in this bill? The chief of police. If the chief decides that it's not serious, that it could be the subject of attempted informal resolution, who oversees it? The chief of police. Ultimately, if there's going to be a disciplinary hearing, who presides and who decides what, if any, penalty to impose? The chief of police. The difficulty with that is that you cannot expect the civilian complainants to have adequate confidence in that kind of arrangement.

If I go back, the declaration or the finding that it's unsubstantiated—it's hardly going to be surprising to civilians to see the chief of the very force against which they have a complaint dismissing it as unsubstantiated. But then, if they decide to attempt informal resolution, I would suggest to you that conciliation often involves attempts—you have to goad people; you implore them; you pressure them. It is not wise to put the chief of police or the chief's designates in the position of trying to promote informal resolution. That is fraught with the risk that it will be perceived as a police-pressured solution, whatever the reality is. As far as adjudication is concerned, again, to put people through all of this and at the end of the day have a hearing presided over by the very department, or even another department, is not going to inspire confidence.

We suggest that the evaluations at the end of the investigation be performed by the director, that the attempts at informal resolution be managed by the director, and that the disciplinary hearings—when it comes to that, you could either create a tribunal such as there was in the system before 1997 or you could skip the chief of police and go straight to a hearing before the new civilian commission. Those are the ways that we think change should be made along the way.

A couple of other points: The classification of complaints as "policy" or "conduct." It seems to imply that there is going to be only one solution: policy or conduct. It's possible for numbers of complaints to involve policy and conduct. Moreover, there is no way that that classification can intelligently be done initially, before there is even an investigation.

I take you back a few years in the city of Toronto. There were allegations—indeed, there were admissions—that the police had been conducting surveillance of the leaders of the black community. First of all, you have to investigate to find out if those allegations are true. Then there's a question of: Who ordered it and who authorized it? It may very well be that regardless of whether or not it was a policy matter, somebody might be at fault for ordering it and authorizing it, in which case you could have a conduct complaint and a policy complaint. This leads us to the suggestion that the bill be recast to reflect that possible reality and also that the decision to classify the complaint come after an investigation and not beforehand.

Finally, we recommend, as we have been for many years, a system for independently auditing police policies and practices. Without waiting for complaints, an agency with ongoing access to police records, police facilities and police personnel should be empowered to look at what is going on and ultimately disclose to the public what they find and make recommendations about it.

The difficulty is that however much you may improve the system—and I think it can be improved, as indicated—to ensure that more aggrieved people come forward, you know very well that they will not all come forward. Some people will still be too intimidated to come forward. So you have to have a way of dealing with that.

Moreover, there will be situations where wrongs may be done and people don't know they're being done. The leadership of the black community a few years ago was not aware for some time that they were under that kind of surveillance. So there has to be a way of dealing with that as well.

Also, there has to be a way of dealing with the determination of police priorities. In the absence of ministerial directives and directives from police services boards, who decides and on what basis is the decision made what the police do all day? Somebody is choosing priorities, and we suggest that an audit system would be helpful in all these respects in order to make the whole system more transparent and ultimately more accountable.

Finally, the Canadian Civil Liberties Association makes these proposals to you not because we think the police are more sinful than the rest of us, but rather because we think they are no less human than the rest of us, all of which is, as always, respectfully submitted. Thank you.

**The Chair:** Thank you for your presentation. We'll begin with the Liberal Party. We started at 11:45. We've got about six minutes, so two per party.

**Mr. Zimmer** In two minutes, just let me say personally, and I know on behalf of the committee and particu-

larly my colleague sitting to my left, that, as always, your presentation is a model presentation regardless of what our views of the content may be. It's a serious presentation and I, for one, always look forward to your thoughtful assistance in these matters. Thank you.

**Mr. Borovoy:** Thank you very much. Anything you say after this will be a terrible anticlimax.

**The Chair:** We'll move on to the Conservatives.

1200

**Mr. Runciman:** Thank you, Mr. Borovoy. Mr. Borovoy and I have known each other for many, many years, and on rare occasions we've even agreed. I have to say I appreciate your submission. In this brief time that we have, there are many areas that I would like to explore with you. I am curious about one element, the compellability issue, which ties in, or I'm tying it in anyway, to police culture. You're a lawyer, aren't you, your background?

**Mr. Borovoy:** I was when I got up this morning. I was hoping it wouldn't otherwise show.

**Mr. Runciman:** I find it passing strange—I'm curious about a sort of lawyer culture. We hear all the time about a police culture; I think there's a lawyer culture. We talk about compellability in an issue that I've raised in the Legislature on a couple of occasions, about compellability of others in the justice system; for example, a justice of the peace being a compellable witness at an inquest into the death of someone when the alleged murderer was released on bail by that justice of the peace. Why shouldn't the JP be a compellable witness? Why shouldn't a judge be a compellable witness? So I think there's a bit of a double standard from the perspective of your profession. I'd love to hear your comments on that.

**Mr. Borovoy:** I'll respond in general the way I once did when a former president of the Metropolitan Toronto Police Association, as it then was, Sid Brown, and I were involved in a television panel. He said, "You keep pressing for independent investigation and review of police matters. What about the law society?" I said to him on television, "If you go with me to make the changes with respect to the police, I'll go with you to make it with the law society." In fact, he did.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, Mr. Borovoy. I don't know; Mr. Runciman, as a right-wing libertarian, has probably agreed with you far more with respect to civil liberties than he's prepared to admit.

I don't know if you addressed, in your review of the legislation, section 58, which prohibits a police officer from accessing this process if the complaint is about another police officer in his or her own police services, which just seems strange to a whole lot of people.

**Mr. Borovoy:** I did not notice that, no.

**Mr. Kormos:** Then we'll move on to the informal resolution, because there are some folks out there who are disappointed that the bill didn't specifically talk about, for instance, mediation, as other government legislation has. The family and children's services amendments, for instance, invoked mediation as an alternative

route. Would you be supportive of a more formal, structured alternative to the adjudicative model, for instance, talking specifically about mediation, as compared to merely using very loose language like "informal resolution"?

**Mr. Borovoy:** I'm not sure that it's the language, using terms like "mediation." I said earlier "conciliation"; that was from my earlier labour experience. Others may call it "informal resolution." I'm less mystified by the language and more interested in how it gets managed. That's why I suggest that it's got to be taken out of the hands of the chief and that the director should be involved in that kind of process, rather than the chief.

**Mr. Kormos:** The police association agrees with you on the adjudication issue. The police association advocated that police associations should be party to any agreement to an informal resolution. That, then, seems to me to put a civilian complainant at a disadvantage, because of course people can be very easily coerced into participating—you made reference to that. I think a police officer surely has a right to consult with his association; why wouldn't he or she? How, then, do we balance that in terms of the civilian complainant? Because there's nothing in the legislation about ensuring that the complainant has access to counsel, advice, support etc.

**Mr. Borovoy:** Of course the person has to have access to counsel, advice, a community organization, whatever, but it's in recognition of all those possibilities of a system that feels uneven that it's so important that it be managed by someone else.

You see, one way it can often work is, you don't have the parties meet. You may bring them together at some points, but you separate them for other points so that you can talk to them without the others being there and so that you have a less intimidating environment.

**Mr. Kormos:** It was your book that was so warmly reviewed by a senior Toronto Sun columnist. In fact, it was Worthington, wasn't it? What was the title of the book? I haven't read it yet.

**Mr. Borovoy:** The title is *Categorically Incorrect*, and I've been trying my best to live down that favourable review ever since.

**Mr. Kormos:** Thank you, sir.

**The Chair:** Thank you for coming out today, and thank you for your presentation.

DON WEITZ

**The Chair:** Our next presenter is Don Weitz.

**Mr. Don Weitz:** Thank you, Mr. Chair. I just want to start off by saying that I don't feel very welcome here, because as I was mentioning to Mr. Kormos, as soon as I walked through the door and said my name and spelled it, W-E-I-T-Z, the OPP guard, in uniform, asked me, "What's your background?" I suppose if my name was Smith or Jones she wouldn't have asked that—because it's not an Anglo-Saxon name. I immediately felt somewhat put off, to put it mildly, by this OPP officer. So

would you please instruct your officers not to ask for people's background when they want to attend a public hearing? That's point one. I felt insulted and discriminated against, and that is not acceptable here or anywhere else in Canada, at least.

The other thing is, why only two days of hearings? I know a number of people who live out of town. They cannot be here. I understand that there are only two days of hearings—please correct me—and then only in Toronto. This is a very controversial bill, as you've heard, so at some point I would like an answer as to why there are only two days of hearings, and the fact that there wasn't much advance publicity in the mainstream press, as far as I know, although I stand to be corrected on that.

I'm here as a social justice activist. I'm representing myself. I've been actively fighting for justice for psychiatric survivors, people with disabilities and other marginalized people for well over 30 years.

You might wonder what the relevance of this handout is. According to the Toronto Star, it is a list of killings by the Toronto police where the SIU, the special investigations unit, cleared them all. The reason why you have a copy is because many of these killings, in my opinion, were largely a result of a lack of accountability on the part of the police and the fact that there is systemic bias against people who have a psychiatric history or who have a non-Anglo-Saxon name, for example, or who are African-Canadians. This is what happens very often when, in my informed opinion, there is a lack of accountability.

1210

I want to go through some of the major points which concern me, as they've concerned Mr. Borovoy, Mr. Sewell and others who care about human rights. There is too damn much power in the hands of one person, namely the director—one person making very serious, fateful decisions for many people who may have the guts to come forward with a complaint. It is open to serious abuse, so that the director becomes a virtual dictator of what is acceptable to be investigated or not acceptable.

There should be a community directorate. That's my first recommendation. It should be an elected one, not an appointed one. We have too many appointees within this government. You want to democratize and decentralize the process? Establish a community directorate drawn from the grassroots so that the decisions will very likely reflect the attitudes and the issues current in that community regarding discrimination, for example, regarding bias or racism or whatever by the police. A grassroots directorate: That's my first real recommendation.

Like others, I'm not happy at all. Lack of independence: There's no guarantee of independence in the investigations that are ordered by the director. That point has been made by Mr. Sewell from the Toronto Police Accountability Coalition, and I certainly second it. It sticks out like a sore thumb. There's just too much room for conflict of interest.

I think the SIU should be abolished. I am charging it, before you, with systemic bias. Just look at the serious

killings that have happened: 18 that are listed. This is the Toronto Star list—it's not my list—that they published. Four policemen were charged in the Otto Vass case, in which case the trial was a big sham, in my opinion, because the lawyers for the police unduly trotted out his psychiatric history and unduly emphasized it, as if that was relevant.

It is not acceptable for a so-called independent investigatory body to not charge police, when there is overwhelming evidence in many of these instances. For example, in the death of Jeffrey Reodica, whose parents are from the Philippines, he was shot from point-blank range three times in the back. It hasn't gone to trial—not charged. The inquest was another sham.

I think that the SIU is not a truly independent body. I know it's not part of the bill—I'm very well aware of that—but I'm talking about independent investigations. The SIU couldn't conduct an independent investigation if its life depended on it. I am very critical and I'm not the only one, I'm sure. Other lawyers, civil rights lawyers, have also expressed their displeasure; I'm sure that they have.

I have a recommendation, although I didn't read Justice LeSage's report, to ensure grassroots accountability. There have to be local regional boards set up, drawn from the people who live in the community, because many of them, particularly in areas targeted by the police, such as Jane and Finch and Regent Park, are under siege by the police. They don't feel that they have a say, I'm sure. I'm not here to speak for them, but it's public knowledge if you go to public forums and listen to people who live in certain areas, very poor areas, where many African Canadians live, many people from other countries, new immigrants. As a matter of fact, we're all immigrants; only the First Nations people are not. But the point is that there has to be more grassroots input, and you're not going to get that in this bill.

I also recommend that this government do some reaching out for a change to my constituency, which it hasn't done so far. Instead of controlling us through the Mental Health Act and so forth and making it easy to make complaints about police bias and police harassment, you should approach a number of advocates who are psychiatric survivors who are doing an outstanding educational job about police bias, systemic police bias, the lack of education that the police are experiencing regarding the key issues of psychiatric survivors, a most vulnerable group that's not likely to come here or not likely often to come to a public forum and make complaints against the police. You should make it easy for them—and not just psychiatric survivors; many others who are marginalized.

Basically, that's all I want to say. I'm open to questions.

**The Chair:** We have about nine minutes, so three per party, and we'll start with the Conservative Party.

**Mr. Runciman:** I have one quick question. Thank you for being here. You've been here all morning, I guess.

**Mr. Weitz:** Not all morning; about an hour and a half.

**Mr. Runciman:** I don't know if you were here for the Ombudsman.

**Mr. Weitz:** I heard Ombudsman Marin, yes.

**Mr. Runciman:** I just wonder what your views are with respect to the Ombudsman providing oversight.

**Mr. Weitz:** Well, it sounds pretty reasonable. I'm not much on particular mechanisms, I'm not a lawyer, but I think there should be oversight, a community directorate. I'm not in favour of the director being given all these duties; I'm in favour of a community collective, a directorate. I'm not in favour of one person, in which case an oversight wouldn't be necessary, but a true community directorate would be my answer. I've tried to roughly sketch that out, although I'm sure others are more able than I am to get into the details of how to set up a community directorate for police complaints.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, Mr. Weitz. You've been very fair in terms of making it clear that you're not specifically addressing the bill, but in an oblique way, you're nonetheless commenting on police oversight in the broadest sense. To that end, I appreciated your comment about the need for elected bodies rather than appointed bodies. So we'll take this even one step further afield, although well within the context: What do you say about insisting that all members of police services boards be elected members?

**Mr. Weitz:** I think that they should be. I'm not a big fan of appointees. There's too much risk of patronage and bias. I mean, if you want to democratize a system in our society, you have to let people have a say. Elect them. If you appoint them, it means I didn't get a chance to select somebody on the police commission or any other government body that has a direct effect on my life, and I want a say about who's going to make decisions on my behalf. I mean, the basic tenet of democracy is a right to express your opinion, and that includes a right to vote and a right to elect your representatives. I don't feel at this point that the Toronto Police Services Board, for example, represents my views and my issues. It's largely appointed. That's the way I feel.

1220

**Mr. Kormos:** Mr. Weitz, I'm very much inclined to agree with you about a preference for elected boards, including police services boards.

**Mr. Weitz:** All should be elected.

**Mr. Kormos:** And health services boards, hospital boards.

**Mr. Weitz:** Health services boards are the same thing.

**Mr. Kormos:** It's remarkable, Mr. Zimmer, that the largest single expenditure of public tax dollars in any given community is controlled through a hospital board that has no public accountability, that isn't publicly elected, that is more often than not a little gaggle of back-room boys who pick one of their own to be chairman of the board. Remarkable, isn't it? We'll be introducing legislation once again—

**Mr. Weitz:** I agree with your point.

**Mr. Kormos:** —when the House resumes, to ensure publicly elected and publicly accountable hospital boards.

**Mr. Weitz:** Absolutely.

**The Chair:** Thank you, Mr. Kormos. We'll move on to the Liberal Party and Mr. Zimmer.

**Mr. Zimmer:** Thank you, Mr. Weitz, for your submission.

**Mr. Weitz:** You're most welcome. I hope you tell your guards down there, or the OPP, not to ask for people's background when they simply want to enter the Legislature. That's the first time that happened to me, and I'm keeping my cool, but I'm not exactly happy. No citizen should be asked that in a so-called democratic society.

**Mr. Dunlop:** On a point of order, Mr. Chair: I just want to make a clarification to the Legislative Assembly. I don't believe those are OPP officers in this building.

**Mr. Weitz:** Well, they're in uniform, but all right.

**Mr. Dunlop:** In this particular building, I think they are officers of the Legislative Assembly, are they not? I didn't want you to—

**Mr. Weitz:** Well, whoever. It could have been security; all right.

**Mr. Dunlop:** You mentioned the Ontario Provincial Police a number of times—

**Mr. Weitz:** We shouldn't be asked.

**Mr. Dunlop:** —and I didn't want it to reflect badly on the OPP. Thank you.

**Mr. Weitz:** I wasn't singling out—it looked like the OPP. Anyway, that's not on Bill 103, but I think you as a committee should be aware of that.

**Mr. Kormos:** The point is made, and I think well received.

**The Chair:** Thank you for your point. It's well received, and thank you.

**Mr. Weitz:** You're welcome.

#### DONNA CHUIPKA

**The Chair:** Our next and final deputant before we break for lunch is a teleconference. The name is Donna Chuipka, and I apologize if I didn't pronounce it correctly.

**Mr. Kormos:** Chair, for a guy whose last name is Berardinetti, surely you could be a little more sensitive to others of—

**The Chair:** I'm trying my best. We have with us Donna Chuipka, and I apologize if I don't pronounce that properly. Good afternoon.

**Ms. Donna Chuipka:** Hello.

**The Chair:** Hello. You have 20 minutes to make your presentation. Any time that you don't use up will be split among the three parties to ask you questions.

**Ms. Chuipka:** Okay.

**The Chair:** Can we raise the volume a little bit? Can everybody hear?

**Ms. Chuipka:** Can you hear that?

**The Chair:** It's a little bit low, the volume. Is there any way of raising it?

**Ms. Chuipka:** Yes. Just a second here. Does that help at all?

**The Chair:** That's a lot better. Thank you.

**Ms. Chuipka:** So I'm on?

**The Chair:** Yes, you are on for 20 minutes.

**Ms. Chuipka:** Okay, thank you. My name is Donna Chuipka. I'm from Sudbury, Ontario, and I recently presented a presentation to the police services board because I was married to a police officer, a sergeant, and he was charged with domestic assault and sentenced to jail for nine months. During that time, I had a lot of obstacles in regards to going through police services. There is that camaraderie of protecting their own.

What you basically have in front of you is my recommendations and the obstacles that I went through, and I think it's pretty self-explanatory, so I won't go through all of that.

When I heard about Bill 103, I thought that was something that really would have helped my situation. I did not even go through the police, 911. I actually had the cellphone number of the chief of police, and that is who I contacted when I finally came to the end of, let's say, my rope on how much abuse I could handle. I had to live through being told that no one was going to believe me, that he's a police officer—who are they going to believe?—that he's trained to do this kind of thing; he's been up in the court stands, basically. I also knew of other officers and things that had been swept under the carpet, shall we say, so that the police officer didn't get in trouble. I guess why I stayed in the abusive relationship so long was that I was basically scared for his career, but at the same time scared that no one was going to listen to me.

My first statement when they did finally come to the door and they asked me how I was—I clearly recall out of it all, and it was a horrendous experience going through that, saying to them, "Why does it matter? There's 200 of you against one of me." That's basically where I felt I was.

I'm a professional woman. I have two children. One has completed a university degree, and my daughter is finishing her fourth year. I have a nursing degree as well. So basically it wasn't that I couldn't be financially independent or I couldn't do anything on my own. My greatest fear was that he was a police officer and I had to deal with these police officers.

When I went through the charges, I didn't really know what to expect, but some of the actions of a few of those officers could have made or broken my case, because I had my vehicle towed away; I had officers come to my door and ask me, "Do you realize what you're going to do to his career?"

I actually made one phone call to find out about an address because I had a passport that I wanted to forward to him, and when I went to the police station to ask them if they could please give it to him, I was told, "We're not a mail service." So I made a phone call to the landlord, who was a police officer's wife, and within 20 minutes I had a police car with two sergeants at my door telling me that I was going to be charged with harassment. By no means was I harassing. When I called the staff sergeant on it to explain to him, "I don't understand this"—I'm

already distraught from everything that's going on—and ask him, "Why are they at my door? I'm not making any phone calls. This is one phone call," and explained why, he said, "Well, you didn't mind when we came to your door and picked up Robin," who is my ex-husband, "so why should you mind this?"

I obviously knew that there was nowhere—I said, "This is unfair. You're intimidating me. When you came to my door, I didn't know if he had killed himself or if something had happened. I didn't know what was happening. There were two officers at my door, and I hadn't done anything." I said, "That scared me to death." He said, "Oh, you're just overemotional. You're this, you're that."

So I called other police services in the area and found out that that is not how they handle one telephone call. The time frame totally was not—I had a witness who was a massage therapist, and a police officer came up to her in the bar and told her to withdraw her statement, that she didn't have to put in a statement. She was potentially, I guess—I had a lot of good material, for sure, that wasn't just, "He said; she said." It was more material. But she was a big part of it. Had I not had that other stuff—she had seen the markings when she had given me a massage. She was told to pull her statement, and there were officers standing around the bar looking at her. She was very intimidated, and as a result she did pull her statement.

When he was arrested, he wasn't put in handcuffs after he had just had an extreme outbreak of rage towards me. That's why they were at my door, and yet they let him finish packing. They didn't put him in handcuffs, the normal protocol for any citizen who breaks the law.

I think the other breaking point for me was that he was on 100% wages when he was off, and the police officer who works in professional standards—he's a sergeant—collected money to give him a free gym pass to the gym I worked out in, and there was definitely a restraining order.

**1230**

The other thing that I found in the trial, and I wish I had sent you the transcript as well, because the judge said it very well, was the fact that when he was criminally convicted—so he is now a criminal; three charges of assault and one of assault causing bodily harm. When it came to his sentencing, his pre-sentencing report basically said that he had problems, but officers sent letters for his character. That really sends a message to the public that, okay, this officer has been convicted criminally, yet they are still protecting him. I had an officer who was charged with an assault prior to that sitting through the whole court session too. I think that didn't send out a good message. And the same thing: Actually, in the sentencing judgment, the judge used his case to set precedents.

These letters: The judge said in his transcript basically that he may have done a good job while he was at work, but no one could go to his character after work. And obviously they didn't sit in the courtroom—for 14 days I testified, I was on the stand—to know, as the judge said,

“what the court knows, what I know and what Donna”—myself—“knows.” I think that sends out the wrong message.

I wouldn't come forth—there had been two other investigations prior, and they kind of got just put aside. I would have to say that was probably more my doing, because I wouldn't really say too much; I was too scared to. But I think that would contribute towards your Bill 103: I didn't feel I could talk to these officers.

In saying that, I have to say in fairness that, yes, there were some officers who did their job well, but when you have officers who—one pulled me over in a rude manner right after the charges; one pulled my daughter over, and she wasn't doing anything. She had a card of my ex-husband's just in with her insurance, one of his police cards. He just took it out and said, “Oh, I don't think you'll be needing this.” That was her private property.

There were so many things that—records weren't given to the Sudbury police centre, because they really couldn't be. The case ended up being put over to the OPP in North Bay, and that made it a little bit easier as time went on because they were very vigilant in not putting up with anything that these officers were doing to undermine the investigation.

Saying all that, I think that Bill 103 would be a good idea. I think too, and I know it doesn't really speak directly to the bill, that police officers who are convicted of domestic violence—you can't have another officer investigate their own. It's just impossible. I do respect the fact, though, that if Bill 103 had an amendment made to the police act, you do have to have highly skilled, trained investigators.

I know it would be a costly venture, but at the same time I don't know if you can put a price on what I've gone through for the last several years, the last two definitely, of going through the trial. I've made it through. I'm better for the whole experience. I'm looking at the positive and I plan to speak out as an advocate against domestic violence by a police officer to try to help other people. That is why I went in front of the police services board for Sudbury. They have to start making their men accountable for their actions.

If they're going to carry a badge and a gun—and when I say gun, too, another time I had to hide his revolver. A staff sergeant called me and said, “Donna, you have to give that back.” I said, “How do you know I have it? If he had it locked up, how do you know I have it?” He said, “Donna, he's going to get in trouble. I have to report this to an inspector.” I said, “Well, my safety comes first and foremost, so I'm not telling you whether I have it or I don't have it.” I held that revolver for five days, when he worked, and the staff sergeant did not report it.

So those are things that have to be looked into, have to be amended. Something has to be done. I think if you read my presentation, you pretty much will understand where I'm coming from. That pretty much summarizes everything.

**The Chair:** Thank you for your presentation. There's just under nine minutes, so three minutes per party. We'll start with the Liberal Party.

**Mr. Zimmer:** Thank you very much for your presentation.

**Ms. Chuipka:** You're welcome.

**The Chair:** We'll move on to the Conservatives.

**Mr. Dunlop:** I have no questions. Do you have any, Mr. Runciman?

**Mr. Runciman:** No.

**Mr. Dunlop:** We have no questions. Thank you for your presentation.

**The Chair:** Mr. Kormos for the NDP.

**Mr. Kormos:** Thank you very much for participating in the hearing process, and thank you for the written presentation. It is a very forcefully produced and articulated commentary.

**Ms. Chuipka:** Thank you.

**The Chair:** Thank you again for your presentation. We appreciate your time today.

**Ms. Chuipka:** Thank you very much.

**The Chair:** That takes us to our lunch break. We resume at 2 o'clock. Is that fine? The committee stands adjourned until 2 o'clock.

*The committee recessed from 1236 to 1404.*

**The Chair:** I'll call this meeting back to order, members of the committee and members of the public. Welcome to the justice policy committee.

Prior to breaking for lunch, Mr. Kormos of the NDP had put forward a motion, and it's in front of us. It's the first item to be considered before we move into our deputations for this afternoon. I would invite any debate on the motion.

**Mr. Kormos:** Recorded vote, please.

**Mr. Zimmer:** Have you spoken?

**Mr. Kormos:** Yes, I have.

**Mr. Zimmer:** In my view, and I'm sure my colleagues' view, Mr. Justice LeSage, in the course of doing his report, spoke with over 320 individuals and groups. In fact, it's one of the most exhaustive reviews of the police complaint system in Ontario. Justice LeSage has chosen to speak through his report. He's obviously aware of these hearings. I expect if he wanted to attend the hearings he would have contacted the clerk. It's entirely up to Justice LeSage to make that request or not make that request. But he has spoken through his report. For these reasons, I, for one, will be voting against this motion.

**Mr. Runciman:** I don't want to prolong the debate. I think it's passing strange that the government spokesperson has taken this position given that his colleague Mr. Crozier was quite interested during the appearance of the Ombudsman with respect to Justice LeSage's position and pursued that line of questioning. It seems curious, at the least, to now hear that they don't want to hear from the justice himself.

**Mr. Crozier:** My few comments, more or less in response to that: You couldn't be further from the truth. I was asking the Ombudsman's comments on his conver-

sation with Mr. Justice LeSage. I didn't ask that Mr. Justice LeSage appear before the committee at all.

**Mr. Runciman:** I didn't suggest you did.

**Mr. Kormos:** I'm not surprised. I find it regrettable, however, that the government would hide behind the robes of Mr. LeSage when it's convenient for them to do so and would allow others to, with at least innuendo, put words in Mr. LeSage's mouth. The government overlooked this opportunity to clear the air because Mr. LeSage doesn't have to come if he's invited, if he doesn't want to. That's why I included the opportunity for him to address in writing the business of section 97.

What was interesting is that this morning staff members hid behind LeSage and implied that Bill 103 is only about giving effect to the LeSage recommendations. What poppycock. Horse feathers. Rubbish. That's not how the Attorney General introduced the bill on first reading. The comments are available in the binder that the staff has so nicely prepared for us.

Clearly, the government doesn't like the Ombudsman. It doesn't want the Ombudsman to have oversight over family and children's services. It doesn't want the Ombudsman to have oversight over this new independent police review process. That causes me great concern. The evolution of the role of the Ombudsman and Ontario's leadership—Ontario was, in my view, a leading jurisdiction in developing a strong, independent Ombudsman office. This legacy is being undermined now by the government and its demonstration of disdain for the Ombudsman office.

Mr. Marin very articulately addressed the issue, not only in his comments to the committee today but of course in his speech to the Toronto Police Services Board in which he first addressed his concern about section 97 of Bill 103. He taught us the Latin phrase "Quis custodiet ipsos custodiet?" The question remains unanswered, doesn't it, Mr. Zimmer? The question is a valid one. The principle is a long-time one.

1410

In view of the fact that notice was given when Mr. Marin made that speech on May 13 of last year, just shy of a year ago now, the failure of the government to adequately respond and, more importantly, the effort to describe the Ombudsman's role as some additional level of police oversight—you heard that earlier today, didn't you, in response to a question put by me saying, "What's wrong with the Ombudsman?": "We don't need another level of police oversight"? What a frantic, albeit feckless, effort to try to respond to the question. "Oh, it's just another level of police oversight. How many levels of police oversight do you want?" It's oversight of this independent police review process.

I trust you read Mr. Marin's comments that he made in May. I read a big chunk of them into the record during second reading debate on Bill 103. I find his arguments compelling; clearly, Mr. Zimmer doesn't. No, I should be more careful, because I have regard for Mr. Zimmer. I'm sure Mr. Zimmer, with his history, his background, his intellectual acuity and his innate sense of fairness and of

what's just and right, doesn't argue with Mr. Marin at all. I'm sure Mr. Zimmer, the parliamentary assistant, not only understands the argument of Mr. Marin but has a great deal of personal sympathy with it.

Is it really lawyers who are the world's second-oldest profession? Because here we are, the parliamentary assistant simply doing what he's paid to do, as compared to what I suspect he really believes in his heart is the right thing to do. Who said that there wasn't a political culture that's alive and well, in addition to the police culture and the lawyer culture? Who would dare suggest that?

Those are all of my comments on the matter. I'll be addressing this again when we deal with clause-by-clause and, of course, in what I'm sure will be an enthusiastic and lively third reading debate on this bill.

I simply note this: I was so proud this morning that Mr. Zimmer, as parliamentary assistant, had something, a piece of legislation, that wasn't a pit bull ban or that wasn't a highly contentious and guillotine debate around the abolition of the Ontario Human Rights Commission. It rather was a substantive and thoughtful, by and large, revision of existing police oversight. I thought, if there was going to be a highlight in his parliamentary assistant career, it was going to commence today.

While I don't want to take anything away from Mr. Zimmer, and he is truly a conscientious member of this Legislature, he has certainly dimmed a glow that attached to him when he walked into this room this morning by his Nuremberg-like acquiescence to the marching orders that come from the east wing, second floor.

Thank you kindly.

**The Chair:** Is there any further debate?

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Recorded vote, then. Is there any need to read the motion back?

**Mr. Kormos:** We've got it.

**Ayes**

Dunlop, Kormos, Runciman.

**Nays**

Balkissoon, Crozier, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

#### TORONTO POLICE SERVICES BOARD

**The Chair:** We'll move on, then, to our 2 o'clock deputation, which is the Toronto Police Services Board and Alok Mukherjee. I apologize if I didn't pronounce it properly.

Sir, you have 20 minutes to address the committee. Any time that you don't use will be split amongst the committee to ask you some questions.

**Dr. Alok Mukherjee:** Thank you very much. Good afternoon, Mr. Chair and members of the committee. On behalf of the Toronto Police Services Board, I want to

begin by thanking you for giving me the opportunity to speak on this very important issue—namely, the public complaints process governing the police. This is an issue of great importance not just for our board but for police services and, indeed, for communities everywhere in this province.

As you know, our board has long advocated for changes to the current complaints system. Our submission to the Honourable Mr. Justice LeSage was the result of months of research, analysis and public consultation. I am encouraged by Bill 103 and recognize that it represents a major shift from the process now in place.

At the same time, I submit that there are issues that still remain unaddressed and additional changes that still need to be made to ensure that the ever-important principles of accountability, transparency and fairness remain the foundation of this legislation.

The move to establish an independent police review director is a positive step, one that will provide greater accountability in the complaints process. In our submission to Justice LeSage, the board had asked that an independent body be created, one that would be responsible for the intake of all complaints. Under Bill 103, the director assumes this role, providing for the overall management of every complaint from the outset. This is important both on a symbolic level and on an administrative one. I am heartened, too, to see that the director has the power to investigate complaints and to appoint investigators.

I would recommend that serious thought be given to the question of resources. With these expanded responsibilities, comes, too, the need for adequate funding and staff. Without these resources, such powers will have little meaning.

On the expanded definition of “directly affected”: Bill 103 expands the definition of “directly affected,” which is, once again, a welcome change. The previous definition of “directly affected” was unnecessarily narrow, leaving many with a legitimate rationale for making a complaint unable to do so. The new language creates more categories of complainants under this provision. However, the provision does not allow a complaint from someone on behalf of an alleged victim of police misconduct who is suffering from a physical or mental disability that renders the individual unable to make a complaint himself or herself. A recommendation to expressly include such a category in the definition of “directly affected” was a part of our board’s submission to Mr. LeSage, and I reiterate that recommendation today.

Auditing of complaints process: The inclusion of provisions to provide for performance audits to be conducted by boards and by the director is significant. Our board believes that this will enhance public accountability of the complaints process and allow for any deficiencies in the new process to be identified and corrected, where necessary.

1420

On informal resolution: Like our current system, Bill 103 contains a mechanism to facilitate informal resolu-

tion of non-serious complaints. Our board very much supports informal resolution in appropriate circumstances where it can offer a meaningful alternative from the often bureaucratic and lengthy complaints process. The increased use of informal resolution by our police service and others is a positive shift. However, I am disappointed to see that Bill 103 contains no guidelines as to when informal resolution should be employed, as was recommended by our board and others. These guidelines need not be overly prescriptive but could include a list of possible types of misconduct that should be referred to informal resolution.

Alternatively, as is the case in the UK, the legislation could provide that informal resolution can be used where the conduct complained of, if proven, would not justify the bringing of any criminal proceedings and that, in the event any disciplinary proceedings were brought, the proceedings would be unlikely to result in a dismissal, a requirement to resign or retire, a reduction in rank or other demotion, or the imposition of a fine. I believe the bill should include similar provisions governing the use of informal resolution.

Suspension of police officers: The suspension of police officers is a critical issue for our board, and we have repeatedly asked that the Police Services Act be amended to provide chiefs of police with the authority, in certain limited circumstances, to suspend police officers without pay. Bill 103 proposes no such amendment. In my view, the current provision severely limits a chief’s ability to effectively and efficiently administer his or her police service. In addition, continuing to pay an officer who is alleged to have committed an egregious offence may jeopardize public confidence in the police service and may constitute a gross misuse of public funds. While I am mindful of the principles of fundamental justice that individuals must be considered innocent until proven guilty, I submit that the current provision appears to be wholly inconsistent with a fair and accountable complaints process as well as sound management practice. I would recommend, again, that the provision be amended to provide for suspension without pay.

“Delay applications”: One area that remains virtually unchanged by Bill 103 is subsection 69(18) of the current Police Services Act. This provision provides that no notice of hearing shall be served if six months have elapsed since the facts upon which the complaint is based, unless the board is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. On increasingly numerous occasions, our board has been asked to decide such so-called “delay applications.” These decisions are usually exceedingly difficult, and it has become apparent that the six-month time period is often a practical impossibility, given the complexity of investigations and current disclosure requirements. I would ask that this provision be amended to extend the length of the limitation period from the current six months.

Before closing, I would like to note that our board is aware of the presentation being made to you by Scadding

Court Community Centre and the Community Education and Access to Police Complaints Demonstration Project. The board has consistently supported this important initiative, which was designed to facilitate accountability and understanding between the Toronto Police Service and Toronto's communities. The board also supports, in general, this organization's recommendations that the new legislation be strengthened in terms of increased accessibility to the complaints process. Specifically, the board supports the CEAPC model developed by Scadding Court and submits that it should be given serious consideration as the implementation process for the new legislation is planned and carried out. The board agrees with Scadding Court's position that there is a need for a variety of intake mechanisms for police complaints and that the implementation of Bill 103 must include a component of community-based intake.

Once again, on behalf of the Toronto Police Services Board, I thank you for the opportunity to speak today and I look forward to changes that will ensure that the new police complaints system is effective, fair, transparent and accountable. Thank you.

**The Chair:** Thank you, Dr. Mukherjee. We have about 10 minutes left, so three and a half minutes per party, starting with the Progressive Conservatives.

**Mr. Dunlop:** Dr. Mukherjee, it's good to see you here. One question: On the very last page, you suggested that the limitation period be extended from six months. Have you got a suggestion on that, unless I didn't catch it somewhere else in the—

**Dr. Mukherjee:** No, I have not suggested what the new period should be. I would suggest that at least a period of nine months would be more reasonable than the current six months.

**Mr. Dunlop:** Okay. Would that be following discussions you've had with your police services board and the chief etc.?

**Dr. Mukherjee:** Following discussions that we have had with the board and the pattern of some of the delay applications that we have had to deal with, we found that six months was quite inadequate.

**Mr. Dunlop:** Okay. That's the only question I had.

**Mr. Runciman:** Just a quick one, sir. I appreciate your being here and appreciate your input. One of the issues that was raised this morning—I think it's going to be part of the discussions over the next day and in our clause-by-clause considerations—was the Ombudsman's concerns, which he has put on the record, with respect to having what he describes as a truly independent oversight of police complaints. Have you or your board—I know you are speaking on behalf of your board—taken a look at this issue? Do you have any position on it, any concerns or any input whatsoever?

**Dr. Mukherjee:** As I heard Mr. Kormos mention, the Ombudsman made that suggestion when he came to speak to our board's 50th anniversary conference. I'm quite familiar with his position.

The board has not had a discussion of his proposal, nor has it taken a position on it. I should say that the

issue that he raises is an important one: that public confidence requires that the proposed civilian director be seen to be independent and be independent and be accountable for that independence. As to whether making the director's office accountable to the Ombudsman is the solution, that's something that the board has not discussed. We don't have a position on it.

**Mr. Runciman:** You're a municipal appointee of the board.

**Dr. Mukherjee:** That is correct.

**Mr. Runciman:** Yes. If you go back to the days when we had a provincial appointee as chair of the board, there were always suggestions that because there was this connection between the government of the day and the chair, who was an appointee of the government, they tended to be supportive of whoever was responsible for their appointment, and I guess that could be the colouring attached to this as well. That's one of the concerns: that this is an order-in-council appointment, i.e., a political appointment, if you will. That could—if not in reality, in terms of perception—damage the effectiveness of that individual, perhaps.

**Dr. Mukherjee:** I guess that's an issue of perception that you grapple with with any appointment. I've been chief commissioner of the Human Rights Commission, appointed by the government of the day. I was a member of the Ontario Civilian Commission on Police Services, appointed by the government of the day. I am chair of the Toronto Police Services Board, appointed by the local city council. There will always be the question as to how independent political appointees are.

I think on balance, when you take into account that these bodies are composed of people with different perspectives who have a duty to carry out under their mandate, they do a good job. What will happen with this new appointment remains to be seen, but I think it is fair to say that the public expects the director to be and to act as an independent person.

**The Chair:** Thank you. Mr. Kormos?

**Mr. Kormos:** Thank you kindly, sir. There's a remarkable convergence between the Canadian Civil Liberties Association with Alan Borovoy and Bruce Miller and the Police Association of Ontario, in that both of them called out for independent adjudication. The police association—and I quite frankly am very sympathetic with their concern—felt that it was inappropriate that a police officer accused of, effectively, misconduct, if you will, in the broadest sense, is going to be subject to a hearing by somebody who is at least an inspector, or the chief, his employer—management, if you will, in the operation. So a very, very powerful argument was made by both the police association and by Mr. Borovoy. What's your view on the need, if any, for independent adjudication, both in terms of the actual process and the perception of it by police officers, by the public?

1430

**Dr. Mukherjee:** As you know, the Toronto Police Services Board has always supported the concept of an independent public complaints system. In our submission

to Justice LeSage, that's the position the board took. Here is the government's proposal. What we would like to see is that the office of the director have the independence and be seen to have the independence to carry out credible investigations. Now, there will always be questions about when the director allows the local police service to carry out its own investigation: What kind of authority will the director exercise on the results of those investigations? What kind of audit will the director carry out of those investigations? Those will be very, very critical in ensuring that people do have faith in this new system.

**Mr. Kormos:** The specific area, though, is not with respect to investigation, although that was noted by Mr. Borovoy, amongst others, but with respect to adjudication. Because in those cases which are handled by the chief of police, the chief of police is charged with holding a hearing or having a designate hold a hearing—and the designate would be or could be a senior police officer. You've made yourself clear on the investigation. What about the adjudication?

**Dr. Mukherjee:** Having seen the adjudication process in our service, where there's a separate office of hearing headed by a senior officer, a superintendent—the board has asked questions about how reliable the adjudication process was, and we spent a whole day with the presiding officer to understand the process that was going on. I know that in our service, I have tremendous faith in the independence of that adjudication process: that it is not directed by the chief; it is thorough; it is impartial. From our point of view, we don't have a problem with the adjudication process within our service. I cannot generalize on that.

**Mr. Kormos:** What's interesting is that the Toronto Police Association sat on the panel with the Police Association of Ontario calling for the independent adjudicator. So you have confidence; I'm not sure that your police officers necessarily have confidence.

**Dr. Mukherjee:** The Toronto Police Association's view is well known to me. Mr. Wilson and I have good, friendly adversarial conversations. I'm quite aware of the difference of our opinion on that issue.

**Mr. Kormos:** Thank you kindly, sir.

**The Chair:** Thank you for your presentation.

**Dr. Mukherjee:** You're very welcome. Thank you very much.

**The Chair:** We'll move on now to our next deputation, ARCH Disability Law Centre.

*Interjection.*

**The Chair:** I'm sorry, sir. There is still time for questioning from the government side. My apologies. I'm not trying to show bias.

**Dr. Mukherjee:** I thought I left the government side speechless.

**The Chair:** Maybe you did. Councillor Balkissoon.

**Mr. Balkissoon:** Here we go again.

**The Chair:** Mr. Balkissoon.

**Mr. Balkissoon:** We've known each other too long. I think we've got to separate.

Mr. Mukherjee, thanks for coming and thanks for sharing your thoughts with us. A couple of years ago, the complaints process was audited by the city of Toronto auditor, and at that time the public was very clear in its request that actually going to a local police station to lay a complaint was a very threatening process and that most police stations are a cold environment. If this process is implemented, the public can now go to a different place, but would the board continue to do outreach and community education, indicating how the complaints process works and facilitating the public doing that through this new director? Do you see that as a role the board will take?

**Dr. Mukherjee:** Absolutely. This board has historically had a position—you were on the board, you know—on the importance of a complaints process that the public has faith in. That still remains a priority for us. We supported this guiding process as a pilot to see if there are alternative models of intake that might increase public faith in the system. We continue to monitor very closely how the system is working within the service. So I have no doubt that even after the office of the director is created, we'll still remain very concerned about the public perception of how the complaints system is working. We'll emphasize outreach; we'll emphasize public awareness of the system; and we'll continue to look at ways to streamline the system within the service.

**Mr. Balkissoon:** Did you ever move to the process of actually allowing complaints over the Internet? That was one of the things discussed at the time, too.

**Dr. Mukherjee:** We haven't done that yet.

**Mr. Balkissoon:** You haven't done that yet. Okay. Thanks very much.

**Dr. Mukherjee:** You're welcome.

**The Chair:** Thank you.

#### ARCH DISABILITY LAW CENTRE

**The Chair:** The next deputation is ARCH Disability Law Centre, Laurie Letheren, the staff lawyer. Good afternoon.

**Ms. Laurie Letheren:** Good afternoon. My name is Laurie Letheren. I'm a lawyer at ARCH Disability Law Centre.

ARCH Disability Law Centre is a charitable, not-for-profit specialty legal clinic that is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate. ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of tribunals and courts, including the Supreme Court of Canada. We provide education to the public on disability issues. Our membership consists of over 60 disability organizations, and ARCH is governed by a volunteer board of directors, a majority of whom are persons with disabilities.

ARCH is encouraged by the government's initiative to reform the current police complaints process. Through our contacts with persons with disabilities, we have heard

that many choose not to complain or abandon the complaint before it is resolved. Many have expressed distrust in the system. In addition, persons with disabilities are often barred from making complaints because the process for filing complaints is not accessible.

The number one recommendation of Justice LeSage was that "an independent civilian body should be created to administer the public complaints system in Ontario."

In his press release of April 19, 2006, Attorney General Bryant stated that if Bill 103 were passed, it "would provide the public with a significant new option for bringing forward their concerns." When Bill 103 was introduced in the Legislature in October 2006, Attorney General Bryant stated that the bill "would entrench an independent and transparent police review system."

It is ARCH's opinion that despite statements made by Justice LeSage and the Attorney General, Bill 103 does not prescribe a significant new option that is independent and transparent.

In the first part of our submission, we will recommend amendments to the bill that, if adopted, would allow for the creation of a police complaint system that is fully administered and controlled by an independent civilian body. It is ARCH's opinion that until police are no longer involved in review of police complaints, the public mistrust and dissatisfaction with the system will remain unchanged.

The second and major part of our submission will focus on the need to amend Bill 103 to ensure that the entire complaint process is accessible and fully accommodates the needs of persons with disabilities.

In the report prepared by Justice LeSage, it is stated that many who had met with him indicated that the current system is not effective and that the ineffectiveness of the system itself led to a mistrust of police. In his report, Justice Lesage wrote, "A fair, effective and transparent complaints system could be a step toward improving confidence and trust in the police." Those presenting to him "suggest that this can only come from implementing a fully independent civilian complaints system."

1440

Similar opinions about the current police complaints system were expressed by the Ontario Human Rights Commission and the Psychiatric Patient Advocate Office in their submissions to Justice LeSage.

In ARCH's opinion, if the system for processing complaints proposed under Bill 103 were established, there likely will be little change in the public's trust and satisfaction with the system.

Under Bill 103, if a complaint is filed about the conduct of a police officer, the independent police review director has the discretion to refer the complaint to the officer's chief, to the chief of another police force or to retain it for investigation by the director's office. ARCH is concerned that resources, funding and outside pressure will force the director to refer many cases to police forces for investigation and resolution. The result will be that the system will be relatively unchanged.

In addition, by providing the director with discretion to refer the complaint to a police service for investigation or to conduct the investigation himself or herself, there will be a lack of consistency in how complaints are investigated and resolved across the province.

For a person with a disability who may be making a complaint about a police force's failure to accommodate her disability, a complaint made to a civilian body should mean that the complaint is investigated and resolved by persons who have been trained in disability issues. All complainants should have equal opportunity to have their complaints properly and fairly resolved.

In addition, having all complaints reviewed by the same civilian body will ensure that there is opportunity to track common complaints and to monitor systemic issues.

ARCH also recommends that in order to ensure consistency in dealing with complaints and to allow for proper monitoring of systemic issues, Bill 103 must be amended to remove the distinction between the process for handling complaints about conduct and complaints about policy and services.

All complaints should be processed in the same way. The conduct of officers is often a reflection of a policy within the police service. For example, we have heard of persons with mental health disabilities who attempted to make complaints about the use of restraints by officers. When the person attempted to make a complaint, she was advised that it was the policy of the police service to restrain all persons who were in mental health crisis and the police station refused to take that person's complaint.

ARCH recommends that all complaints about officer conduct, chief conduct and policies and services should be reviewed and investigated by a completely independent civilian review body.

ARCH recommends that the independent civilian review body must be fully separated from any police service and must not employ any current or former police officers.

ARCH recommends that part V of Bill 103 be amended so that each complaint, regardless of type of complaint or jurisdiction of the police service, shall be subject to the same review, investigation and resolution process.

ARCH endorses the position taken by the Psychiatric Patient Advocate Office, CLASP and other groups that submit that a truly independent civilian body should be established to handle all police complaints in order to restore credibility to the police complaints system and to have a system that is fair, effective and transparent.

On page 38 of his report, Justice LeSage makes reference to the difficulties that complainants have in navigating the current system.

In creating and designing a new system for handling police complaints, the principles of universal design must be applied to ensure that all aspects of the new system, starting from educating the public about the system to final resolution of complaints, are usable by a broad range of people. Steps must be taken to ensure that the system is fully accessible to persons with disabilities.

First, an accessible process requires that all barriers, including barriers to accessing its physical spaces, communications and information, policies and practices, be identified and removed to ensure full accessibility. There are currently many barriers, including attitudinal barriers, which persist throughout the complaints process. For example, the information provided on the Ontario Civilian Commission on Police Services does not appear to be available in formats that would be accessible to persons with visual impairments, and the contact information does not provide a number for those persons with hearing impairments who use telecommunication devices or text telephone.

Because complaints must currently be in writing, those persons who may not be able to write out their complaint because they are illiterate, have disabilities that affect their mobility or are persons with cognitive, communicative, intellectual or developmental disabilities may be barred from filing a complaint. The body receiving complaints must accommodate these persons by either providing a device or a person who can assist in drafting their complaints. The process must be flexible and must accommodate the particular needs of all persons with disabilities.

The onus should be on the civilian review body to ensure that all accommodations are in place once a person's disability has been identified. One possible way of achieving this may be to have a system where accommodation needs are identified at the point of filing the complaint. A case file manager would then ensure that the claimant's needs are accommodated throughout the entire complaint system. Key to this is to ask the individual complainant how she or he can be accommodated, understanding that there are a great variety of potential accommodations. Accommodating the needs of individuals is consistent with the spirit of the Accessibility for Ontarians with Disabilities Act and Canadian human rights jurisprudence.

ARCH recommends that a provision addressing accessibility be legislated and that the following subsection be added after section 56 of Bill 103:

"The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the complaint process."

In addition, ARCH recommends that principles of accessibility be included in subsection 56(1), which sets out the powers of the independent police review director in establishing procedural rules and guidelines for handling complaints. The following should be added to section 56:

"In making rules governing the practice and procedure before it, the independent police review director must prescribe practices and procedures that ensure full accessibility to persons with disabilities throughout its process."

ARCH recommends that subsection 56(2) be amended as follows:

"Procedural rules established by the independent police review director under clause (1)(a) shall be in

writing and shall be made available to the public in a readily accessible manner and, in particular, in a format that is accessible to all persons with disabilities."

ARCH agrees with Justice LeSage when he stated that public education on the new system will be critical to increasing the public's trust and use of the new complaints system. The information must be available in accessible formats and must be delivered in manners that ensure that all persons with disabilities can obtain and understand the content.

ARCH recommends that subsection 58(4) be amended by adding the following:

"The independent police review director shall provide information about the public complaints system in formats that are accessible to all persons with disabilities."

The body responsible for designing and administering the hearings and appeals process must make sure that all barriers, including barriers to accessing its physical spaces, communications and information, policies and practices, be identified and removed to ensure full accessibility.

Accessible hearing procedures would include such things as:

- providing all documentary evidence in accessible formats;

- the independent police review director would ensure that the costs of converting these documents are covered;

- providing interpreters and interveners; and

- being flexible on timing of the steps in the process so that those who may require more time or a different time because of their disability are accommodated.

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Subsection 58(1) states that a member of the public may make a complaint to the independent police review director. Subsection 58(3) states that a complainant may act through an agent. Neither "member of the public" nor "agent" are defined in the bill, and it's unclear whether a third party can file a complaint.

In addition to allowing a person to appoint someone to act on their behalf, organizations that may have encountered police or may have a concern with a policy or service should be able to file their own complaints. As well, organizations or persons who have an interest in the welfare of a particular group should be permitted to file an application on behalf of such persons, with their consent, when the person with a disability is unable to do so.

A good example of a complaints system that allows anonymous complaints is the system for filing complaints at the pay equity tribunal of Ontario. The Pay Equity Act allows an employee or group of employees to remain anonymous in a proceeding by allowing them to appoint an agent who replaces the employee as the party to the proceeding. ARCH recommends that subsection 58(1) be amended as follows:

"Any member of the public or organization may make a complaint under this part to the independent police review director about,

- "(a) the policies of or services provided by a police force; or

“(b) the conduct of a police officer.”

ARCH recommends that the following be added as subsection 58(1.1):

“A person or organization may make a complaint under subsection (1) on behalf of another person if the other person,

“(a) would have been entitled to make a complaint under subsection (1); and

“(b) consents to the application.”

ARCH recommends that all sections of the bill that refer to “member of the public” need to be amended accordingly to include organizations making complaints on their own or on behalf of another person.

ARCH recommends that the following, which adopts the wording under subsection 32(4) of the Pay Equity Act, be added as a subsection to section 58:

“Where a complainant or group of complainants advises in writing that” they wish “to remain anonymous,” their appointed agent “shall be the party to the proceeding and not the complainant or group of complainants.”

ARCH recommends that the current limitation period set out in subsection 60(2) be extended from six months to two years, in accordance with the general standard for civil actions. Many persons with disabilities are unable to meet the six-month deadline because of their disability. ARCH recommends that section 7 of the Limitations Act be included as subsection 60(2.1) to provide that the limitation period does not run during a time in which a person is incapable.

ARCH endorses the recommendation made by the Psychiatric Patient Advocate Office in its submission to Justice LeSage that an advisory committee be formed to assist with the design, implementation, monitoring and evaluation of the new police complaints system. It's our submission that persons with disabilities should be on the advisory committee in order to assist the civilian body in addressing the unique needs of persons with disabilities.

In conclusion, we ask that you take seriously our considered recommendations and those of other presenters. This is an opportunity for change that should not be lost. Thank you.

**The Chair:** Thank you for your presentation. We have about one minute per party to ask you a quick question. We'll start with Mr. Kormos.

**Mr. Kormos:** Thank you kindly. The informal resolution proposed here, which nobody suggests is necessarily a bad thing—but the police association notes that it would like its police officers to know that they have an assurance that the police association will have a role in approving participation in informal resolution. There's no comparable protection for civilian complainants, who can be bullied very easily into the informal resolution with a litany of arguments about how long it will take, how stressful it will be etc. How should the government be addressing the absence of advocacy for civilian complainants?

**Ms. Letheren:** I'm not an expert on the whole process, but I would think that one thing that necessarily has

to be there is that informal resolution has to be agreed upon by all the parties. At that point, the opportunity for support and advocacy would be something the complainant would have to be considering, whether they'd go ahead.

**The Chair:** Thank you. To the Liberals.

**Mr. Zimmer:** Just so I understand you, in the case of an anonymous conduct complaint, what mechanism would you have to assess credibility if you got into a he-said-she-said situation?

**Ms. Letheren:** My understanding of how it works under the pay equity tribunal is, if they're getting to the point of cross-examination, it's an option that the tribunal has to call witnesses at that point if they feel it's necessary for a fair and just hearing. So there are provisions within the rules under the tribunal to allow for that.

**The Chair:** Thank you. To the Conservatives.

**Mr. Dunlop:** I have no questions, Mr. Chair.

**The Chair:** Mr. Runciman?

**Mr. Runciman:** I have just a quick comment on the limitation period suggestion that you're making which would follow along the lines of the Limitations Act. It strikes me that that is a fair proposal. Not that I'm disparaging the rest of your submission, but certainly I think that's one that any fair-minded member of the committee should be supportive of.

**The Chair:** Thank you for your submission.

## LAW UNION OF ONTARIO

**The Chair:** We'll move on to our next deputant, the Law Union of Ontario, Mr. Howard Morton. Good afternoon.

**Mr. Howard Morton:** Thank you very much for having me here to make submissions on behalf of the law union. I'm going to restrict my submission to six concerns we have with the bill as it stands, but at the outset let me say that with respect to these concerns and others, we're very concerned about the public's perception of the body that you're setting up. I know that the government has taken the position that the public trust the police—and they do. However, if you were to ask the public if they trust the police completely to investigate themselves, I think you'd get a far different answer. The early difficulties that were experienced at SIU were mainly ones of perception. Community groups, ethnic groups and racial groups simply did not accept that a proper investigation was being carried out when in fact, under Justice Osler, it was. I'm sure some of you here will recall the difficulties that existed then. Unfortunately, when I was the director, the difficulties were with the police and not with members of the public.

Our major concern is that you are, in this bill, turning the investigations over basically to the police, and I fail to see the logic in that. You recognize that there is a need to have complainants make their complaints somewhere other than the police station. So the bill recognizes the absolute need to separate the complaint initially out of the police, yet when it comes to investigating the com-

plaint and interviewing the complainant or members of his family or friends, you turn that over to the police. To me, it makes absolutely no sense whatsoever.

These complaints are not homicides and they are not matters involving serious bodily harm; that's the mandate of SIU. At SIU, you need a police investigation. The only persons who have sufficient training to carry out those investigations are former police officers, by and large, with a civilian component to the system.

The complaints that are going to be investigated here are simply ones quite often, for example, about bad-mouthing—racial or ethnic epithets used by police officers. There are scores of provincial investigators in all sorts of agencies in this province who can carry out that type of investigation competently and fairly.

Your reasoning behind using the police can't be one of budget, because the officers who are assigned in the bureaucracy that will have to be created in the police service and the additional officers required will make far more in terms of salary and require as much space as using civilian investigators who have some investigative experience in perhaps other agencies.

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The difficulty becomes exacerbated in the small communities. There aren't many left in Ontario that have small police forces. You're going to have an officer who's very close to the officer who's been complained about investigating that complaint. There's an easy way around it: You bring in another police force. But that doesn't address the major concern that we have with allowing the police to police themselves. So unless we're missing something in terms of the logic and thinking when you start off with the premise that the complaint should be made elsewhere, there simply does not seem to be any basis whatsoever for using the police to investigate these complaints.

Our second concern involves the exemption from the Ombudsman's review. You're building a loser here if that becomes known. That's a clear perceptual difficulty with the bill. It's beyond me as to why you would not make this agency come under the purview, as virtually every other agency does, of the Ombudsman. The present Ombudsman, as a former director of SIU, presumably won't be there forever, but you would want to have an independent review of the agency at some time in two, three, four or five years. Again, there doesn't seem to be any logic apart from the fact that the current Ombudsman is busy exempting this agency from that.

The third issue we have is with the burden of proof. The bill uses the term "clear and convincing evidence." There is no lawyer who can tell you what that means—absolutely none. It will ultimately be determined by the Divisional Court, I'm sure. But our main concern is that it means, "Beyond the shadow of a doubt, I am convinced of something." It's beyond being satisfied beyond a reasonable doubt, potentially, depending on how it's ultimately defined. It's not a term known to law generally. There are all sorts of thresholds that you could use apart from the civil or the criminal threshold. We would suggest the one that police officers are very familiar with:

that on a review of the evidence, the investigator is satisfied on reasonable grounds that the complaint is justified, and he or she has those grounds to believe the complaint. It's a threshold which is greater than the civil burden, less than "beyond a reasonable doubt," presumably, and one that has been used and recognized throughout common law for well in excess of a century.

I'll just add that the standard dictionary definition for "convincing" as an adjective is "firmly persuasive." I don't know whether that gets you any further, but it's a burden that's going to cause you all sorts of trouble; I can tell you that. There will be lawyers coming out of every direction arguing what that means.

The fourth concern we have is with respect to the mediation process. Many of the complainants whom we in the law union have spoken to over the years who wish to make a complaint against an officer simply do not have the sophistication, in our view, to come up against a police officer who no doubt will be briefed and assisted by the police association and their lawyers. In our view, you should give complainants who are willing to have a mediation—we think mediation is a great idea—an opportunity to apply for legal aid. I know this will add to an already overburdened legal aid system, but if the person could demonstrate that they are in need both financially and in terms of dealing with the issues, they should have some opportunity to have assistance in doing so. Otherwise, they're going to be totally overwhelmed no matter how good the mediator is because the mediator must be right in the middle in these mediation processes.

The last two issues: One is the act's taking the position that the findings, or decision, of the complaint are not to be made public. Again, I think you're heading for a disastrous perception. If the complaint is found to be on clear and convincing or on reasonable grounds, no more should be said except that. If the complaint is unfounded, it would be possible to give some reasons, as SIU does. Whenever you create covert decisions that nobody knows about, you're just giving in to those who perceive our entire system of justice to be mandated against them.

Our last concern is with the six-month limitation period. It's going to really affect persons who are charged with criminal offences. I've spoken to several of our members at the law union. If somebody comes to us and wants to lay a complaint and they're charged, our advice is, "Don't lay the complaint," because you're going to be interviewed and you may jeopardize your trial. I know that the director is going to have some leeway to grant extensions, but maybe it could be built into the regulation somehow that that would be a recognizable exemption.

Those are our respectful submissions to you. Overall, we really welcome moving away from the system that presently exists. We just respectfully feel that you don't have it quite right yet. Thank you very much.

**The Chair:** Thank you, Mr. Morton. We have about three minutes per party, and we'll start with the Liberals.

**Mr. Zimmer:** Have you addressed your mind to the whole issue of how frivolous and vexatious and off-the-wall complaints should be weeded out of the system?

**Mr. Morton:** If it is apparent from the nature of the complaint itself, then I would think that the director would weed that out initially. Without getting into specific cases that have happened in this city involving the police in the last few years, on some of the things we found we would have said, "That's ridiculous. That can't happen in Toronto." I don't know that it's that easy to weed them out except if it is true that they would not amount to a real complaint. In other words, if I say, "The officer made me produce my driver's licence and insurance," right away that's gone. But the ones that allege conduct on the part of an officer either by epithet or otherwise, I don't think you can tell if they have an issue or if they're totally off the wall.

I agree with you that many, many of these complaints are going to be groundless, absolutely groundless. I don't have any misconception about the merits because I've heard some people who have come to me about complaints. But you've got to deal with them, right? That's all part of accountability.

**Mr. Zimmer:** Thank you.

**The Chair:** To the Conservatives. Mr. Runciman.

**Mr. Runciman:** Mr. Morton, it's good to see you. Thanks for your submission.

**Mr. Morton:** Thank you, sir. Good to see you.

**Mr. Runciman:** I think the government has some problem with the Ombudsman's position related to this legislation. My assumption is that it's because he's doing his job, much to their chagrin. I'm just wondering, from your experience with the SIU and the oversight provided by the Ombudsman—he indicated that they do provide oversight for the SIU—what was your experience? Did you have a problem with that relationship while you were at the SIU?

**Mr. Morton:** No, but probably only because we didn't have any oversight at that time. I can't imagine any body that would not want to have oversight, because you get an independent view of how to make your system work a little better. At a minimum, you get that. It's just totally illogical to me. I think the government is setting itself up for a perception problem here with large communities in the city and throughout the province.

**Mr. Runciman:** Just another quick question on concerns you expressed about the police being the investigative—or former police. I'm confining my question to the former police being part of this investigative body. You talked about cost, and the cost associated with retaining former police officers versus others who have had some investigative experiences. Is your concern focused primarily or solely on the cost implications or is there an objectivity concern that you have as well?

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**Mr. Morton:** No, sorry, our concern is with police investigating the complaint; in other words, going to the chief.

When it comes to former police officers, I'm going to be a little careful here. Let me say that the law union's position is that it should not be former police officers, and I've cleared that with them. I can tell you, when I

was at SIU the best two investigators I had were former police officers. One was a former London bobby and the other was a former Metro officer. There's tremendous history to policing that they can bring to an organization that's basically going to be investigative. I personally do not have any difficulty with—and you can find them. This notion that the culture is there: Once they're out of the culture—most of them are retired, as you know—they can do the job. You've got to be careful in the ones you pick, but you've got to be careful no matter whom you pick.

**Mr. Runciman:** I agree with you wholeheartedly. Thank you for that.

**Mr. Kormos:** Thank you kindly, sir. I'm interested in your comments about the standard of proof of "clear and convincing," and with the assistance of AG staff I was able to locate the current provision in the Police Services Act which is "clear and convincing." Has there been difficulty with that standard in the course of the last 10 years?

**Mr. Morton:** I can't say that there has. I honestly don't know. I can tell you, of the lawyers I spoke to, which would number at least seven, maybe as many as 10, that nobody can figure out what it means.

**Mr. Kormos:** That's interesting. Chair, perhaps Mr. Fenson can help in that regard, then, because I don't have the preceding statute, the 1990 statute, which was overhauled significantly in 1997. If we could get the standard that was established in the 1990 statute, and, Mr. Fenson, if you could find any judicial—

**Mr. Morton:** I don't think there's been any. Manitoba—one other province might use the same standard, I think.

**Mr. Kormos:** This is a problem that should be considered and addressed. If we can get a little bit of material from you on that, I'd appreciate it very much.

**Mr. Morton:** The lawyers will be mad if you change it because they're all looking forward to getting a lot of work out of that.

**Mr. Kormos:** Thank you kindly, sir.

**Mr. Morton:** Thank you very much for having us here.

**The Chair:** Thank you for attending today.

#### METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

**The Chair:** We'll move on, then, to our next deputation, Metro Toronto Chinese and Southeast Asian Legal Clinic; Avvy Go, director. Good afternoon.

**Ms. Avvy Go:** Good afternoon. My name is Avvy Go, clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. I would like to begin by thanking the committee for providing us an opportunity to comment on Bill 103.

Just a few words about the clinic: We are a community-based organization similar to ARCH, funded by legal aid. We are mandated to provide free legal ser-

vices to the Chinese and Southeast Asian communities in the Toronto area. Over the years we have represented a number of clients who have filed complaints against members of police over policemen's conduct, including the use of excessive force, unlawful arrest and other discriminatory treatment. Many of our clients experience racism and other forms of discrimination at the hands of members of police.

As immigrants and refugees who come to Canada, they think of Canada as a country that respects the rule of law and they think of police officers as the impartial enforcers of that legal system. They find it hard to reconcile their perception about Canada and our legal system with their actual experience. Those who choose to pursue complaints against police officers are further disillusioned by a complaints system that lacks accountability, transparency and independence. Very often, by the end of that process they are totally disillusioned and their confidence in the complaints system and the police system as a whole is often completely shaken.

There are many groups, including our clinic, particularly those working with racialized communities, that have been calling for reform to the police complaints system for a long, long time. Particularly, we want to have an independent civilian oversight system which will make the police truly accountable to the public. For these reasons we welcome the government's initiative to bring forward Bill 103.

When the Attorney General of Ontario announced the new police complaints system, he said that the system was based on the recommendations made by the Honourable Justice Patrick LeSage, who conducted a review of the entire system and made a number of recommendations. At the time the LeSage report came out, we stated that we supported the report in principle and some of his recommendations. However, we felt that the report did not go far enough in many areas. So our view about the LeSage report hasn't changed. Having said that, we are trying to review the bill and compare that to the actual recommendations made by Justice LeSage, because, as the AG promised, that was what the bill was based upon. Then we're looking at issues that were actually not addressed by Justice LeSage.

My written submission contains a number of recommendations. I'm just going to highlight a few of them in the interest of time. The first set of recommendations that Mr. LeSage looked at is around the issue of access, and he made a number of recommendations. The bill in some way goes to implement those recommendations. Of course, the establishment of an independent police review director, the IPRD, is clearly a good start, but it does need improvement in a number of areas. For instance, recommendation 1 of the LeSage report says that the new independent body should produce an annual public report for the government and should hold an annual public meeting. The bill kind of talks about an annual report to the Attorney General, but does not talk about the annual public meeting, so we want to add that to subsection 26.1(8) of the bill.

Recommendation 2 of the LeSage report calls for the establishment of an advisory body for each region covered by the bill which is made up of community and police representatives. Again, that recommendation was not reflected anywhere in the bill, so we want to have a provision added to set up an advisory body. In addition, we want to make sure that the mandate of the advisory body is clearly defined to include such systemic issues as hiring and recruitment processes, establishing procedural rules for investigation and review, and also developing a work plan for the director. Also, we believe the advisory body should be inclusive and reflective of all the communities with stakes in fair policing.

Recommendation 3 of the report deals with the functions of the independent body. Some, but not all, of the activities included in the recommendation were transferred into the bill itself, which is at section 26.2. We want to include on that list of functions things like engaging in educating the public about the complaints system; providing appropriate access to the system; recognizing the linguistic, cultural and geographic diversity of the province; and providing appropriate assistance to complainants in the filing of complaints.

Similarly, we want to amend subsection 58(4) to ensure that the information and assistance provided by the director will reflect the needs of the linguistic, cultural and geographic diversity of the province.

Recommendation 7 of the LeSage report deals with the six-month limitation period of the filing of a complaint. I think that issue has been echoed by a number of the presenters here today, so I'm not going to repeat it, but to again endorse the position that the whole six-month limitation period has to be reviewed, in particular using recommendation 7 in the report as a basis for amending the bill.

Turning now to the issue of the informal resolution: The LeSage report recommends that any informal resolution be conducted by a neutral body. There's no such requirement in the bill, so we recommend that the bill must be amended to include that particular requirement.

On the issue of investigation, Mr. Justice LeSage's recommendation 14 is that the police officers assigned to an investigation "not have any connection to the incident and be removed from the persons involved in the incident." Again, that's not a requirement that is reflected or specified in the bill. We want that to be amended as well.

**1520**

On hearings and discipline, recommendation 20 of the report says, "The government should develop a body of independent adjudicators to preside over" the hearings in the province. That is, again, not stated in the bill, and we want that to be added.

On audits, research and inquiries, recommendation 24 makes a number of suggestions as to how audits should be done and when they should be conducted. The bill adopts parts of the recommendation. We want the full recommendation to be reflected in the bill.

We do not include it in our paper, but one of the issues that the representative from ARCH raised is around third

party complaints. When I look at the bill, I find it extremely confusing because section 58 and section 60 seem to be saying different things. One section says that “any member of the public” can file a complaint against the police on the issue of policy and services, but then section 60 seems to suggest that you have to be directly affected by conduct in order to file the complaint. In any event, at the very least those provisions need to be clarified. I fully endorse the idea that there should be third party complaints allowed, particularly for vulnerable members who find it very hard to raise issues on their own.

There are also issues not in our report around a clear and convincing burden of proof. We find it hard to understand, although I believe there is a decision from the Court of Appeal which seems to suggest that it’s somewhere between reasonable doubt and balance of probabilities. But wherever that burden stands, how it’s being applied in reality is another issue that I think needs to be addressed.

One of the key recommendation of the LeSage report is found in recommendation 27, in which Mr. Justice LeSage called for sufficient funding to be provided to the new independent body to ensure that it will be “able to operate in a manner that ensures public confidence in the police complaints system.” We could not agree more. Without sufficient funding, the director will have no choice but to refer all police complaints to the police services for investigation, regardless of the nature of the complaint and the appropriateness of the referral. The director can only carry out this broad mandate in a meaningful manner if it has the necessary resources to do so. The success of this new body will bring public confidence back into our law enforcement system. Failure, on the other hand, will cause further damage to the already fragile relationship between the police and racialized communities in particular. We therefore recommend that the bill be amended to include a commitment from the government of Ontario to provide sufficient resources to the office of the independent police review director to ensure that it will be able to operate in a manner that ensures public confidence in the police complaints system, as suggested by Mr. Justice LeSage.

Turning now to some of the issues not addressed by the report, first of all there’s the issue that previous presenters have raised that police are still investigating police complaints. One of the foundational principles of a civilian police complaints system is that civilians, not police, should be dealing with complaints against police. We remain concerned that without a truly civilian-controlled, -managed and -staffed police complaints system, public confidence and trust in police services may not be fully realized. So we include in our paper a recommendation that the Attorney General should conduct a review of the bill three years after its passage to see if the objectives for reform, as set out in the LeSage report, have been accomplished.

We further recommend that in conducting the review the Attorney General must consult widely with com-

munity groups, especially those from the affected and marginalized communities who are most likely to be victims of police misconduct due to race and other grounds of discrimination. Should the review conclude that the proposed system falls short of the objectives for reform as set out in the LeSage report and that public trust in the police system remains an issue, the Attorney General should commit to developing a truly civilian police complaints system in order to provide an independent oversight body for the police system.

But short of having a truly civilian oversight system, we endorse a proposal being made by a number of other groups, including the African Canadian Legal Clinic, which recommends that all complaints relating to the issue of race, racism and related forms of discrimination be investigated by the independent review director. By providing the director the power to retain all race-based complaints, racialized communities will then be assured that the complaints will be taken seriously. As well, by retaining all race-based complaints within his or her office, the director will be better able to identify the underlying systemic problems leading to the complaint and hopefully will be able to recommend solutions to address them.

In conclusion, policing is an important public service that Ontarians need in order to protect our personal and public safety. Police services must be provided in a respectful and equal manner to all people regardless of their background. Given the extraordinary powers that police officers enjoy and the important role that they play in our society, it only makes sense that police are made accountable to all members of the public and that any abuse of police power must be dealt with appropriately. The existing police complaints system simply fails to achieve police accountability. We do welcome the change, but let’s hope that the change is real and that it will really work for the vulnerable groups in Ontario. Thank you.

**The Chair:** Thank you for your presentation. We have just under two minutes per party for questions, starting with the Progressive Conservatives.

**Mr. Dunlop:** Thank you for your presentation today. I’m from a central Ontario riding, so we don’t have a large Chinese community, but certainly I’ve been working for the last few weeks in the Markham by-election and have met a lot of really nice Chinese people, including our candidate, Alex Yuan.

I just wanted to mention something to you. There are a number of recommendations that obviously you’d like to see made to reflect the LeSage report. If the government wouldn’t support those recommendations, are you still in favour of the bill—your community, your organization?

**Ms. Go:** I think the bill will provide the skeletal framework for us to make further improvements because it will allow the government to set up the independent body. Once that is set up, I think that hopefully we will be able to review how effective it is. If it’s proven not to be very effective, then hopefully more changes will come later.

**The Chair:** Thank you, Mr. Kormos?

**Mr. Kormos:** Thank you kindly for participating. Interesting—on page 8, the final paragraph, your concern about the ability of the IPRD to hire retired “former police officers,” which is your language. I appreciate your expression of that, but having heard Howard Morton, as you did, Howard Morton surely has credibility in this respect, doesn’t he?

**Ms. Go:** Well—

**Mr. Kormos:** Has it caused you to rethink this sort of blanket, absolute opposition to former police officers? Howard Morton says you’ve got to be careful—fair enough; you’ve got to be careful about anybody you hire in that type of role—but that people who are familiar with it have experience and history in policing and can bring some very valuable insights, and I suspect particularly valuable because these are people who know that police culture. So I’m just asking you if you’re prepared to rethink. I’d appreciate it. It’s such a small part of your submission but it’s not insignificant. Are you prepared to rethink that in view of what Morton said?

**Ms. Go:** Yes, I am prepared to rethink that, but ultimately, as Mr. Morton has pointed out, you have to get the right people, regardless of their background. In reality, sure, because a lot of the professions, like lawyers, doctors, a lot of the investigators—particularly for lawyers, anyway; we often hire lawyers to investigate lawyers. So I do see why a case can be made, or that members who belong to that profession or were once members of that profession can still be able to carry out an investigation in an objective manner. But I think you need to look at the overall context, and that’s one piece of the overall context of the civilian oversight system.

1530

**Mr. Kormos:** You know, the Ombudsman has expressed concern that section 97 in the bill specifically bars him from engaging in any oversight. Some people have tried to obfuscate the issue by suggesting that the Ombudsman shouldn’t have to be supervising police conduct. It’s got nothing to do with that. It’s about people having recourse to an ombudsman if they feel that the IPRD hasn’t been fair in administering its responsibilities. What do you have to say about Ombudsman oversight over the proposed IPRD?

**Ms. Go:** I think there needs to be some oversight or some auditing of the work done by the IPRD, whether it’s the Ombudsman or whether it’s through another process, requiring the director to report to the Legislature or whatever. I think there needs to be more thinking about who that IPRD should report to to ensure transparency. It could very well be the Ombudsman, but I don’t think that’s necessarily the case. I guess the problem right now is that there is nothing in the bill, apart from some mentioning of the audits and a report to the Attorney General. I think those who are concerned about the lack of Ombudsman oversight are clearly not convinced that the current provisions are sufficient.

**Mr. Kormos:** Thank you.

**The Chair:** Thank you very much. We move on to the Liberal Party. Mr. Crozier.

**Mr. Crozier:** Thank you, Ms. Go, for appearing today and bringing your comments to us. Being from a small, urban-rural municipality, I appreciate particularly that you’ve brought out, if I recall correctly, recommendation number 2: that there should be community and police representatives on an advisory group in each region, because policing is different all around the province. Certainly, it’s different in my community from the city of Toronto, for example. So I think that’s something that’s well worth considering. Thanks for pointing that out.

**The Chair:** Thank you for your presentation this afternoon.

## JOHN CUDAHY

**The Chair:** We’ll move, on, then to the next presentation. John Cudahy?

**Mr. John Cudahy:** Thank you for giving me the opportunity to speak to you this afternoon. There is one category that I don’t want to touch. Police have to deal with some very dangerous criminals out there, some really rough cases, and I don’t even want to enter that. That’s a given. We need to support them when they’re doing their job, and that’s beyond discussion.

What I do want to talk about is—perhaps I could tell you what happened 17 years ago when I went to a meeting like this at police headquarters. As I was leaving, a policeman hollered out loud, “What’s your phone number?” I gave it to him, and the illegal phone calls began. Two years of illegal phone calls occurred because I attended a meeting and spoke honestly.

The point I’m making is that bad habits develop. It’s not just the police. Look at bullies in the schools. In the elementary and the secondary schools, the mentality of bullies—there’s a lot of it out there. Some of it seeps into the police force. There are a lot of fine people on the police force trying to do their best, but I have seen some real bullies—in my case, being harassed by gangs of criminals for 14 years because I helped to set up the Bill Clinton-Boris Yeltsin summit in Vancouver in April 1993—something good. Everyone involved was praised for that—Prime Minister Mulroney.

Anyway, what happened is gangs of thugs showed up to stalk me, bug my home, bug my phone. I’ve been punched in the face. I’ve been smashed up against the wall—and these are goons, these are real thugs who were and are still stalking me. I mean, these are literally the street scum.

I naturally complained to the police. I tried patiently, politely and honestly to appeal to the police. I got nowhere. I filed a formal complaint. As a matter of fact, not only did the police refuse to address it, the reaction that I kept getting from the police was automatic: They would lie, they would deny everything. They would suggest, “Maybe you have mental problems. Maybe you should see a psychiatrist.” This routine was repeated again and again. They got much worse. I filed a formal complaint and went through the system and it bounced right back to the individuals on the police force who were already

guilty of corruption and misconduct. I was threatened and insulted all over again. I just saw something—there's a dark side there.

These habits—as many of these very competent people said to you already, the police cannot and will not investigate themselves. They just won't do it. There's too much pressure within the police force, and a lot of honest, decent police can't do it either because the bullies are in key positions in certain police divisions. They hold the sway. This unwritten code: It's unwritten, it's dishonest and it's not fair. That's why I came here, just as an individual, to appeal to you. I congratulate you for working on this Bill 103. Something has to happen. We just can't sit back and allow it to—these bad habits are decades old and they don't get any better.

I would also like to mention some of the sources of these bad habits: CSIS, the RCMP, and extremists from the FBI and the CIA are here. They're bringing a lot of bad habits. Toronto police won't oppose them. Some joker shows up from Washington with an FBI badge and says, "We're going to get this guy. He set up the Clinton-Yeltsin summit and we don't like that. We don't want politicians talking to each other. We prefer hatred and violence." The Toronto police should have said, "Look, I'm sorry. We protect our individual citizens. We don't harass them." But they don't do that. They just joined whoever these—obviously they're CIA and FBI, and CSIS is in on this as well. These people are completely out of control, as we saw with the Maher Arar situation. There's a lawlessness at the federal level that seeps down into local police. The local police say, "Well, the CIA, the FBI, CSIS and the RCMP don't have to obey the law. They make the law up as they go along. They are a law unto themselves. So why should we obey the law?" You see where the bad habits are coming from.

It's wonderful what you people are doing, but it will have to be done at the national level as well because these national outfits are just literally beyond the law, bugging people's phones—good people, honest people, decent people—teams of them following them in the streets. Some of their behaviour is just shameful. It's a culture that has to stop. There has to be some sort of accountability.

It's an awful feeling, to make your appeal to the police politely, patiently and waiting and hoping, and have somebody knock on your door and say, "We refuse to investigate any of the bugs that are stalking you. We refuse to do any of that, but we just think that you're a little bit nuts." How do you respond to this sort of abuse? Lying and denying everything, automatically, and saying, "You're making it all up. We're going to arrest you and charge you with mischief because you're making it all up." I wish I were making it all up; then I could just snap my fingers and it would go away. But it's very true, very real. That's why I came here, as just an individual citizen, to give you my experience with the police. There are a lot of decent cops, but the bullies are in there interfering with really good police work in many cases. I would be so grateful to you if you could come up with some sort of a mechanism that would stop this.

1540

**The Chair:** Thank you, sir. We'll start, then, with the NDP.

**Mr. Kormos:** I just want to thank you very much for coming forward today. You've made a valuable contribution to this process. I appreciate it.

**The Chair:** The Liberals?

**Mr. Zimmer:** Thank you for your submission.

**The Chair:** The Conservatives?

**Mr. Runciman:** I join my colleagues in thanking you for being here.

I'm just wondering: When you said you've approached police in the past with complaints, have you ever approached the Ontario Civilian Commission on Police Services with a complaint?

**Mr. Cudahy:** Oh, yes indeed—formally, in writing, politely, patiently, waiting, hoping, and the thing just bounced right back to the same police officers who were abusive. Four of them showed up one day—four of them. They let out a stream of insults, insulting me in every possible way, hoping I would react, because if I reacted they would have pounced and beat the hell out of me. But I wouldn't react; I knew what they were up to. This sort of provocation, this sort of mean-mindedness, small-mindedness and pettiness—as I said, there are a lot of decent people on the police force. Let the good people on the police force run the show, for a change.

**Mr. Runciman:** Thanks very much.

**Mr. Cudahy:** Thank you very kindly for your time. I'm grateful to you.

**The Chair:** Thank you, Mr. Cudahy.

#### CO-OPERATIVE POLICING: KILLALOE AREA

**The Chair:** We'll move on to our next deputation. It's Brian Tyrrell, Co-operative Policing: Killaloe Area.

**Mr. Brian Tyrrell:** I'd like to thank you for the opportunity to do a presentation here today. I'd like to introduce you to my left-hand man, Mr. Robert Howe.

It has been a long day and a lot of travelling. We come from Killaloe, a small logging and tourism town in Renfrew county. We all know each other there, and life is pretty straightforward. It's also a place where the existing police complaints system isn't working.

The recommendations which we're presenting today have the support of four local municipalities, whose councils have also submitted them to the Attorney General.

Many people in our area no longer trust the police. Here are some incidents that ordinary people in our community have reported to COPKA—that's our organization, Co-operative Policing: Killaloe Area—and we've verified these reports. These experiences could just as easily have been yours.

You're driving on the highway at night past the local detachment office. Without signalling, an oncoming car swerves across your lane and into the station. As you slam on your brakes to avoid broadsiding the vehicle,

you see that it's a police cruiser. Numerous other examples have come to our attention where the police have violated the Highway Traffic Act in our area. It's fairly common.

You're a teenager who gets into a fist fight at a public dance—the fellow was 17. Without warning, an officer tases you in the back. As you fall to the ground in front of dozens of outraged witnesses, the officer continues to shock you. You're left with 10 burn marks on your back and chest. If you had been using cocaine or had a heart condition, this many taser shocks could have killed you.

You're a middle-aged mother whose son has just been arrested following an altercation with another youth. This is not a major event; this is an altercation with another youth. Frustrated with the situation, you get in your car and attempt to drive away. An officer tries to wave you over, but you are in an emotional state and you don't want more contact with the police. You drive on at the speed limit. Although the police know you and where you live—as I was saying, it's a small community; people know you. They know where you live. They knew her; they knew where she lived. Five cruisers with 10 officers follow her for several kilometres, set up a road-block and stop her. Two officers point drawn handguns at her head. Another officer swears and kicks her door; she's too scared to open it. He smashes the window, chokes her with the seatbelt and drags her from the car. She's shoved to the ground and an officer slams her face into the pavement several times. She's handcuffed and then kicked. As a result of the incident, she suffers from severe post-traumatic stress disorder.

None of these individuals or others whom we've heard from used the existing police complaints system. Some were too frightened to go face-to-face with the police. Others were facing charges stemming from the incident and didn't want to do anything that might prejudice the outcome of their charges. Another did not complain for fear of harassment. He'd heard of the police stopping someone more than 20 times. And no police officer was disciplined in any way as a result of these incidents because there were no complaints made.

We're all here today because the system doesn't work. It doesn't work for the police management because they don't know who's causing the problems because there are no complaints made; it doesn't work for the offending officers because they don't get the counselling and the training that they clearly need; it doesn't work for the good officers, the ones who are doing exemplary work, because they don't have the trust and co-operation of the local community. They're tarred with the same brush as the offending officers and the local people don't want to have anything to do with them. I've heard from a middle-aged lady. She said, "I used to trust the police. I'd call them at any time if there was something going on. Now I'm afraid of them. I wouldn't even consider phoning them." This is really important in a small community if you're trying to do policing work. More than that, it doesn't work for the people who are victimized, who are told by offending officers, "You have no rights," or, "I

can do anything I want." We've spoken to people who have been told this by the police. Without an effective complaints system, those officers are correct: They can do anything they want if there's no accountability.

Positive change is on the way. As it stands, we think that Bill 103 introduces significant improvements over the existing system. However, three key LeSage recommendations need to be included or strengthened for the new system to work.

We've heard from a number of others about the time limit on complaints. The discretion given to the director by subsection 60(2) of Bill 103 not to deal with a complaint more than six months after the incident should be deleted or, alternately, that six-month period should not start until after the charges stemming from the incident have been completely resolved. Defence lawyers typically advise their clients against filing a complaint while charges are pending. Often, the charges are not resolved within six months. We suspect that charges are sometimes laid specifically to discourage or even prevent complaints being filed. We have a number of incidents where people have mentioned to us that they were called on obviously trumped-up charges in order that they wouldn't make a complaint because they'd been severely treated by the police.

Officer identification: All uniformed officers should be readily identifiable by a sufficiently large name patch, as recommended by LeSage. Unless the officer can be identified, how are you going to make a complaint?

Harassment, intimidation and retaliation: Section 79 of Bill 103 provides that any officer who harasses, coerces or intimidates a complainant commits an offence. We support the penalty included in subsection 79(3) of imprisonment of up to one year. We recommend, however, that the maximum fine should be increased from \$2,000 to \$5,000, that being the maximum fine in section 61 of the Provincial Offences Act. Courts are most likely to deal with these things with a fine. It's very unlikely that a judge is going to send a police officer to jail. They can put in the possibility of a one-year imprisonment, but the chances of a police officer being sent to jail are pretty remote because his chances of survival without being pretty badly treated there are slim. I don't think a judge would do that. In that case, we've got to have a fine that's at least somewhat of a deterrent. If the police union pays for the fine instead of the individual officer, there's no deterrent at all.

In our small, rural community, everybody knows everybody else and they recognize each other by their cars, so harassment is easily done and it is done frequently. That instance of the gentleman not wanting to complain because he knew somebody had been stopped 20 times: We were just talking with a young man who said that he'd been stopped 10 times in two weeks with no charges laid—obviously harassment. It's a very common thing.

Officer safety is a legitimate concern for all of us, but it's increasingly being used to justify questionable police behaviour. It's vital that this be balanced by an effective

and accessible complaints system. Unless the LeSage report's recommendations on the time limit and officer identification are implemented in Bill 103, its usefulness is undermined. What good is a well-designed system if nobody can use it?

**1550**

The people of Ontario need your help. We urge you to make the necessary amendments to make Bill 103 effective. There were some excellent recommendations made earlier today and I certainly hope that you have the ability and the intention to incorporate those in this new legislation. This is your chance—and it's a really important one—to raise the standards of policing in this province for generations to come.

Thank you very much.

**The Chair:** Thank you. We have about nine minutes and we will start with the Liberal Party. Mr. Zimmer, do you have any questions or comments?

**Mr. Zimmer:** I've asked several witnesses this. I have heard your thoughts on dealing with the substantive complaints and your very legitimate concerns that all complaints ought to be investigated and so forth. What would be your plan to deal with the frivolous and vexatious complaints and complaints, really, that are just over the top and ought not to clutter up the system and choke up dealing with the quite legitimate complaints? How would you weed those out?

**Mr. Tyrrell:** I have an idea, but my left hand is suggesting—

**Mr. Robert Howe:** I think the comment that was made earlier that to judge a particular complaint to be of that sort right off the bat is a dangerous thing to do. I notice, too, that there's a provision in section 12 of this bill that by regulation that term can be defined, and so can bad faith. Initially, complaints might appear to be of one or another of that sort, and I'd be concerned about what definitions might be prescribed by regulation. I think many complaints might have a veneer of "this looks pretty frivolous" and upon investigation, if there was one, not appear to be frivolous at all.

What did you want to say, Brian?

**Mr. Tyrrell:** I was just of the impression that the new director would in fact be vetting all complaints to the standards that are established to eliminate those frivolous and vexatious ones. This would also take a load off the police departments because right now what complaints do get registered—and there are precious few where we come from—the police are having to vet and screen out the ones that are obviously in bad faith or vexatious. My understanding was that the new body would do that job.

**Mr. Zimmer:** Thank you.

**The Chair:** We'll move on to the Conservatives. Mr. Runciman.

**Mr. Runciman:** Gentlemen, thank you for travelling to attend the meeting. I know that's a long trip and I think it reinforces the strength of your feelings regarding this issue, the fact that you have taken the time to travel here to appear before us. I very much appreciate it.

I have to say, I'm struck by the strength of the concerns in your region related to policing. I gather the policing in your area is provided by the OPP.

**Mr. Tyrrell:** That's correct.

**Mr. Runciman:** There is no municipal service in place.

**Mr. Tyrrell:** That's correct. I think it's important too that I should mention: This is specific to our area but it's not exclusive. From what we've seen in the media, it seems to be that some of these instances are quite widespread.

**Mr. Runciman:** Is there a police services board or an advisory board in your region that deals with the OPP?

**Mr. Tyrrell:** Currently we have an organization called CPAC, which is the Community Policing Advisory Committee, where each of the municipal councils sends a representative to this meeting once a month with the local staff sergeant. We've been attending that for a year now.

**Mr. Runciman:** And you've made your concerns known to them?

**Mr. Tyrrell:** Yes. We've brought up specific issues such as the taser, this incident around the taser. We were quite clear about getting answers and educating the public about what was going on. A lot of people didn't even realize the taser was in use.

**Mr. Runciman:** And no positive feedback from the advisory board in terms of—they're the folks who actually are dealing on a regular basis with the providers of the police service.

**Mr. Tyrrell:** That's correct. The CPAC committee is, at this point—the individuals from the municipal council seem to come with great reluctance to say, "We were told to come and tell you about this, sir, and let me spit it out really quickly and I'm a little embarrassed to have to tell you that certain of our constituents are concerned about A or B or C." But they have accomplished a certain amount in the time that we've been there. We've also noticed that in that time they've tended to cross their "t"s and dot their "i"s a bit more carefully because they know there's an independent civilian group watching. It has made a bit of a difference.

**Mr. Runciman:** Have you attempted to meet with the regional superintendent for the OPP to discuss your concerns?

**Mr. Tyrrell:** Not yet, no. We have met with the staff sergeant and all the local sergeants and we continue to interact with them, but I think that would be a good idea.

**Mr. Runciman:** I think it would be worth the effort. Thank you again for being here today.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you, gentlemen. I invite you to talk to the clerk and the Chair when we're finished here to get compensation for travel, if you're so inclined. You're entitled to it.

**Mr. Tyrrell:** Really?

**Mr. Kormos:** Yes.

**Mr. Howe:** Okay. We're eating. I'll buy the beer.

**Mr. Kormos:** This is a troubling narration. Mr. Runciman clearly has addressed some of the styles that

you might use, some of the strategies that you might use in addressing it. Judges hear these stories. What do local provincial judges have to say about it? We haven't got a whole lot of time.

**Mr. Howe:** I might address that. I practise law, and some criminal law. Certainly one of the incidents in our brief was before the courts and a couple of others too that are just about as shocking. I was involved in a case where a judge concluded that a man had been led naked out of his home in handcuffs and another case where a family, including two young children, were delayed for about an hour and a half on the side of the road on a cold night while an illegal search was conducted.

**Mr. Kormos:** Judges have made findings on the record that are critical of the police, yes?

**Mr. Howe:** Yes.

**Mr. Kormos:** What do crown attorneys say about it?

**Mr. Howe:** Apart from—and the judges can only do so much, I think; they make the findings. The crown attorneys haven't done anything. In the one case of the gentleman led from his residence, he did commence a civil legal action.

**Mr. Kormos:** And the defence bar, you and your colleagues?

**Mr. Howe:** Certainly we're sensitive to the issues but I think conscious as well of perhaps the limitations of what the judiciary and the judicial system can do. Certainly to undertake a civil action is a major undertaking that would probably be beyond the means of most people and not appropriate where the real issue isn't compensation.

**Mr. Kormos:** But the sort of judicial findings that are obviously available by way of transcript: Aren't you sending these on to the Ottawa Citizen or the National Post or the Toronto Star for—

**Mr. Tyrrell:** We're far too small to get on their radar. We're lucky to be here today. We've had a lot of good representation from local newspapers but they're very small and it doesn't get picked up on a national level.

**Mr. Kormos:** Nobody here is going to pass judgment; right? But I'm telling you, if you've got these sorts of things that cause you concern, that cause judges concern, that cause defence lawyers concern, it seems to me that that's the sort of thing, to the chagrin of the authorities, that papers like the Ottawa Sun or the Ottawa Citizen or the Toronto Star love seizing hold of. I don't know. When I saw you on the list, I thought this was some sort

of community-based policing operation, where there was collaboration and where it was a small town showing big cities how to do it better. So I've got to tell you, I'm shocked by the information you've come here with.

**Mr. Tyrrell:** It's shocking to have to deal with it.

**Mr. Kormos:** How long have the OPP been there?

**Mr. Tyrrell:** In Killaloe?

**Mr. Kormos:** Yes.

**Mr. Tyrrell:** Twenty-five years.

**Mr. Kormos:** Okay, so this wasn't part of the new contracting-out of municipal police services.

**Mr. Tyrrell:** No.

**Mr. Kormos:** Okay. Interesting.

**Mr. Tyrrell:** But again, it's important to realize that these are examples that are one locality. From what we're understanding, these are quite widespread.

**Mr. Kormos:** Good luck.

**Mr. Tyrrell:** Thank you. Thank you for being able to present here and thank you for your work on Bill 103, because Bill 103 is really important. If you can come up with 60% of the recommendations that have been made today, it will be so much more powerful.

**Mr. Kormos:** Mr. Zimmer is the parliamentary assistant to the Attorney General.

**Mr. Tyrrell:** I'm well aware of that.

**Mr. Kormos:** You may want to spend a little bit of time with him—we're going to recess now—just getting some contact information so you can keep in touch with him.

**Mr. Tyrrell:** That would be great.

**The Chair:** And we can also help you with your travel compensation, as well.

**Mr. Tyrrell:** Wonderful. As we said, we're buying the beer.

**Mr. Zimmer:** But no driving.

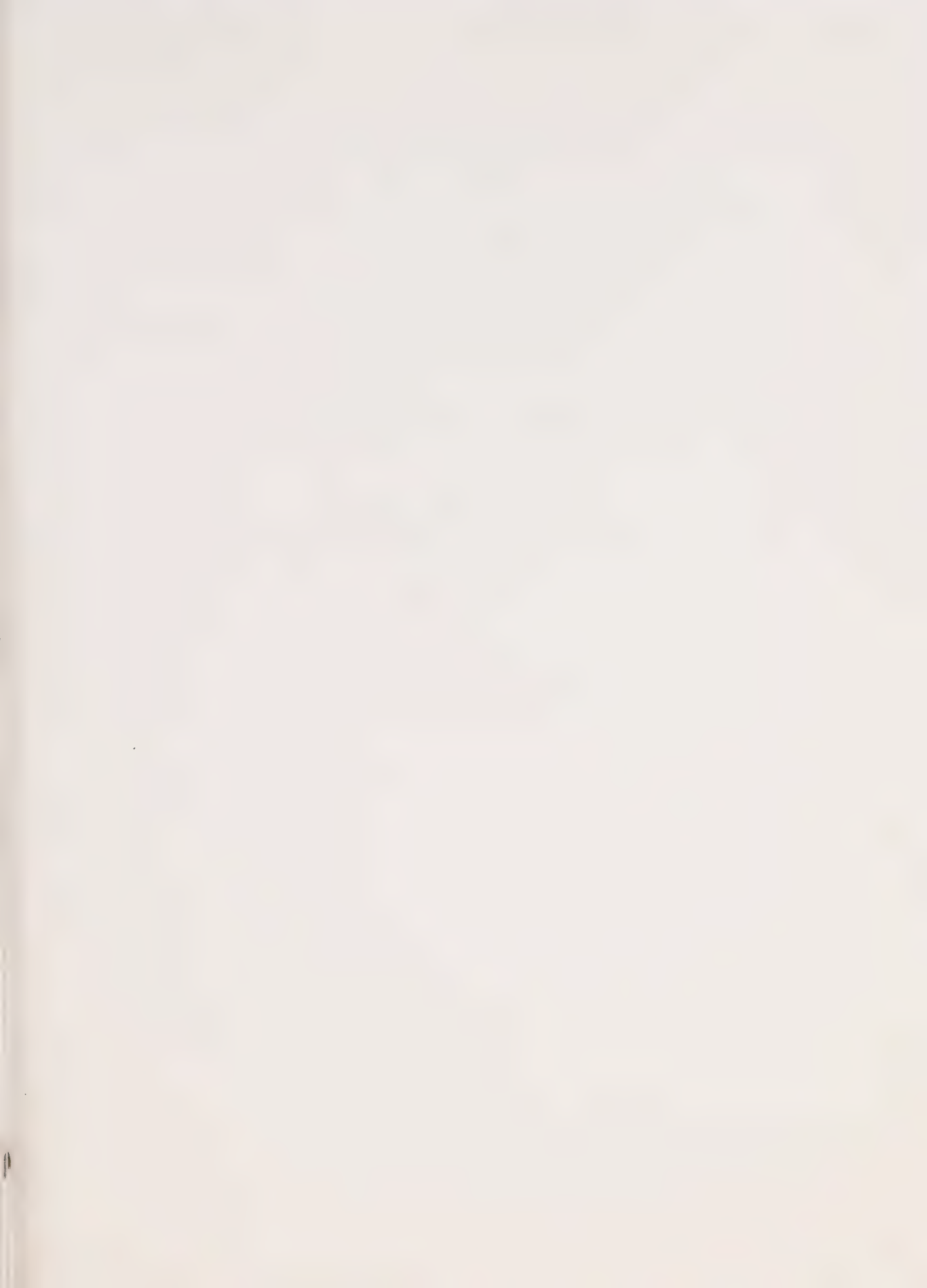
**Mr. Tyrrell:** But no driving, no, no.

**The Chair:** Thank you for coming out.

Just before we adjourn, I wanted to recognize someone who has been here today for most of the day—he's visually impaired but he has been listening very carefully—Hamid in the back there, along with his friend Anthony Chang. They've been listening carefully to the presentation today. Welcome to our committee.

That concludes the presentations for today. This committee stands adjourned till 10 a.m. tomorrow in room 151.

*The committee adjourned at 1600.*





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## CONTENTS

Tuesday 30 January 2007

<b>Subcommittee reports.....</b>	<b>JP-1021</b>
<b>Independent Police Review Act, 2007, Bill 103, <i>Mr. Bryant</i> / <b>Loi de 2007</b></b>	
<b>sur l'examen indépendant de la police, projet de loi 103, <i>M. Bryant</i> .....</b>	<b>JP-1022</b>
Ministry of the Attorney General .....	JP-1022
Mr. John Twohig	
Mr. Graham Boswell	
Police Association of Ontario .....	JP-1027
Mr. Bruce Miller	
Mr. David Wilson	
Ombudsman Ontario.....	JP-1029
Mr. André Marin	
Toronto Police Accountability Coalition.....	JP-1033
Mr. John Sewell	
Mr. Harvey Simmons.....	JP-1035
Canadian Civil Liberties Association .....	JP-1036
Mr. Alan Borovoy	
Mr. Don Weitz.....	JP-1038
Ms. Donna Chuipka.....	JP-1040
Toronto Police Services Board.....	JP-1043
Dr. Alok Mukherjee	
ARCH Disability Law Centre .....	JP-1046
Ms. Laurie Letheren	
Law Union of Ontario.....	JP-1049
Mr. Howard Morton	
Metro Toronto Chinese and Southeast Asian Legal Clinic.....	JP-1051
Ms. Avvy Go	
Mr. John Cudahy .....	JP-1054
Co-operative Policing: Killaloe Area.....	JP-1055
Mr. Brian Tyrrell	
Mr. Robert Howe	

14  
79

Gouvernement  
Publication



JP-38

JP-38

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**Official Report  
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(Hansard)**

**Wednesday 31 January 2007**

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des débats  
(Hansard)**

**Mercredi 31 janvier 2007**

**Standing committee on  
justice policy**

**Independent Police  
Review Act, 2007**

**Comité permanent  
de la justice**

**Loi de 2007 sur l'examen  
indépendant de la police**

Chair: Lorenzo Berardinetti  
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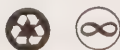
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 31 January 2007

Mercredi 31 janvier 2007

*The committee met at 1006 in room 151.*INDEPENDENT POLICE  
REVIEW ACT, 2007LOI DE 2007 SUR L'EXAMEN  
INDÉPENDANT DE LA POLICE

Consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act / Projet de loi 103, Loi visant à créer le poste de directeur indépendant d'examen de la police et à créer une nouvelle procédure de traitement des plaintes du public en modifiant la Loi sur les services policiers.

**The Chair (Mr. Lorenzo Berardinetti):** Good morning, everybody. The committee is now back in session. This is the standing committee on justice policy.

## KEITH HOWELL

**The Chair:** Our first deputation this morning is Mr. Keith Howell.

Good morning and welcome. The format is basically to allow you 20 minutes to speak, and the three parties will ask you questions during any time left over after your presentation.

**Mr. Keith Howell:** I'd just like to make it clear that I have no axe to grind against the police. I was a police reporter for more than 12 years, and every day on a daily basis I was dealing with the police. I went out on patrol with police officers numerous times. I had very good relationships with police, mainly in North Bay and Brockville. I did numerous feature stories on policing every year, and frankly I think the cases that I have outlined here are very isolated.

Just to give you an overview of the main points I'd like to make out of this, I think it's really important to consider allowing third-party representation in the police complaints process. This is a very intimidating process. I'm somebody who as a reporter dealt with politicians and police on a daily basis. Even for me, it's just been extremely frustrating the last two months, trying to get anything done about a mistake. Everybody makes mistakes. A police officer made certain mistakes on a police report, and to get it changed has been so frustrating. I think the average person would really have a hard time going through this. I really encourage you, as a part of

the new system, to please consider third-party representation. In the case of my family member, she just could not have gone through this on her own. She has told me she would have had a nervous breakdown to navigate the whole process.

Another thing is the six-month statute of limitations. I think that should be reconsidered—if you would please give that considerable thought. This case would not be brought forward if that were strictly applied here, and I think there's a real injustice that's been done and it wouldn't be corrected, and others wouldn't be corrected. I think there are other cases that are going to come behind us here that would benefit from this presentation, hopefully, so that nobody else has to go through the same kind of thing.

Another point: The investigating officer in this case is still investigating our complaint, and I just don't think that's appropriate. I think it's a conflict of interest.

Another key aspect: I talked about an assault incident in November 2000. I really believe that for a full and complete examination of what happened there, you need the trial transcript. There was a trial, and there was a full acquittal that ruled that my family member acted in self-defence. It's all laid out there in the trial and yet the police have not, I have been told, ordered a copy of that transcript.

How would you like to be raped, and then find out that the police report says you and your rapist are married, you're recently separated after a six-year relationship and that you lived with your rapist's mother for eight or nine months after the attack? There's not a shred of truth to that, and police officers I've talked to agree, but the problem is getting it corrected. What do you do in a system like this to get a police report corrected? It is incredibly hard. I've been working on it for two months. Even though the police admit these mistakes that I just outlined—and that's just the start; I think there are other mistakes too but I'll just leave it at that—further to that, these mistakes are being used against my family member in order to get a restraining order, keeping somebody away from her, to get that quashed. It's just created terrible consequences for our family.

Basically I'll just leave it at that. I'm open to any questions that you might have. Thank you.

**The Chair:** Thank you for your presentation. We have about 15 minutes left, so five minutes per party. We'll start with the Conservative Party.

**Mr. Garfield Dunlop (Simcoe North):** Thanks very much, Mr. Howell, for being here this morning. I haven't really had a chance to go over your document because there's a lot to it. Can you just briefly sum up the change you'd like to see? Are you familiar with the legislation?

**Mr. Howell:** Yes. I've looked over it.

**Mr. Dunlop:** Do you have one key recommendation that you'd like to see put forward at this point?

**Mr. Howell:** Well, I see a problem, basically. How do you get a police report changed? If somebody says that you're a child molester, for instance, and it's on a police report, how do you go about getting that changed? It's a frustrating process. It's very intimidating. I know that one of the things you're considering is whether there should be third party representation. I really encourage you to do that, if you can, because there are just so many people out there in the public who would run into brick walls and would not be able to go through with this.

The six-month statute of limitations: I think there are so many injustices. I believe these are isolated incidents, but there are others that occur outside the six-month statute of limitations. I believe that that should be opened up. In a lot of cases there may be something written down in a police report, as we found, and if you don't find out about it within six months, does that mean you shouldn't be able to do anything about it?

Again, I don't think the investigating officer should be involved in a subsequent appeal in the complaints process.

**Mr. Dunlop:** That's fine for me.

**The Chair:** Thank you. Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** Thank you kindly. This is a troubling narration. I read the material you wrote while you were speaking. I hope you don't mind, because I was listening to you as well. This incident, the crime, was in 2000?

**Mr. Howell:** Yes.

**Mr. Kormos:** You write in your material that last week a complaint was made to OCCPS?

**Mr. Howell:** Yes. We tried to go through an informal process. I've dealt with the police a lot in the past through in my job, in my career, and I thought that probably something could be done; because there were obvious mistakes, it would be easy for people to find out that this isn't true.

**Mr. Kormos:** Did you have a lawyer acting for you at any point, the family member, at any point during this process?

**Mr. Howell:** Not in regard to the police, no.

**Mr. Kormos:** Chair, I think all of us are concerned when there is a bona fide allegation made about a sexual assault, a rape, and when investigating police appear to prejudge the matter to the point where they don't lay a charge. Quite frankly, even if the information you say was adopted by the police officer is true—spouse or common-law spouse living with mother-in-law—that doesn't impact on an allegation of sexual assault. It's a matter of, as we heard yesterday, "So what?" It's ir-

relevant. Spouses can rape spouses while they're married to each other, and that's straightforward, clear-cut. This is disturbing.

The problem is that yesterday the Ombudsman was here, and he spoke about this bill last May when he spoke to the Toronto Police Services Board. If you read this morning's paper, you'll see that the Ombudsman was successful in the case of one Ms. Aucoin, down where I come from, Jim Bradley's constituent in St. Catharines, in persuading the government to fund some out-of-province treatment for her. The Ombudsman described the process whereby health patients have to apply for and appeal decisions about out-of-province treatment and medication as being complex, irrational, illogical, and difficult to manoeuvre even for literate, well-educated people. This is the point I'm getting to: I believe, as does the Ombudsman, that it's incredibly important that this new complaints process be capable of being reviewed by the Ombudsman, because even the best of complaints can be frustrated by a complaints process. In your case the informal complaints process was frustrating: complex brick walls after brick walls, right?

Lord Jesus, why is the government resisting letting the Ombudsman be in a position of oversight of the new complaints procedure being proposed? Because just like you and your family member, if you're frustrated by the process, you've got nobody to go to. You go to your MPP, and do you know what he or she is going to tell you? "Oh, I can't get involved in those things." Do you know what the Attorney General is going to tell you when you raise a question in question period? "Oh, it's an arm's-length body." Not very gratifying, is it, Mr. Zimmer? Not very gratifying at all.

Lord Jesus, if this man's story here today doesn't tell us how important it is to have the Ombudsman engaged in a role of oversight over a complaints body, then nothing.

Thank you very much. You've made some compelling points here, and I wish you well in your complaint to OCCPS. Have you visited your MPP yet in the jurisdiction? This is in Peel?

**Mr. Howell:** Yes. I don't live in Peel—

**Mr. Kormos:** That's okay. But the incident is in Peel?

**Mr. Howell:** Yes.

**Mr. Kormos:** I encourage you, and again, I don't want to impose more work on that member because that member is probably pretty busy, but that's okay, because he or she is quite capable of writing to the Attorney General, the Solicitor General, calling for an investigation of this matter at that level. I encourage you to do that.

**Mr. Howell:** Thank you.

**The Chair:** We'll move on to the Liberal Party.

**Mr. David Zimmer (Willowdale):** Thank you very much for coming and sharing this story with us. I know it's a delicate and sensitive issue with you and your family member, so it takes a certain amount of courage to come here and share that with us. I'll reflect on what you've put before this committee.

**The Chair:** Thank you for your submission today.

COMMUNITY AND LEGAL AID  
SERVICES PROGRAMME,  
YORK UNIVERSITY

**The Chair:** We'll move on then to our next deputant: Community and Legal Aid Services Programme, CLASP, York University.

Good morning.

**Mr. Rob Carson:** Good morning. My name is Rob Carson. I'm a law student at Community and Legal Aid Services Programme, CLASP, a student legal aid clinic at Osgoode Hall Law School at York University. We are located in, and do most of our work in, the Jane-Finch community.

I would like to begin by discussing the importance of an effective police complaints system in socially excluded communities like Jane and Finch. Second, I will turn to specific aspects of Bill 103 and how we believe the bill can be enhanced to improve the quality of the police complaints system and ultimately the quality of policing in Ontario. Specifically, I will speak about the need for independence from the police, informal resolution of complaints and third-party complaints.

The police system cannot function without public trust and co-operation. During the second reading debate of Bill 103, many of the members cited the figure that 80% of Ontario citizens have faith in the police. However, I would like to stress that in a socially excluded community, such as Jane and Finch, this area of trust is substantially lower. In socially excluded communities, trust in the police may be almost non-existent. Another agency that we work with in the Jane-Finch community called Caring Village did a survey in 2005 in which 78% of youth surveyed in the Jane-Finch community said that they have never called the police when they were in trouble, and 51% stated that they knew someone who had been mistreated by the police. Large segments of these communities view the police with suspicion, antagonism, hostility and fear. The reform of the police complaints system is a great opportunity to restore a necessary level of trust in the police. However, this opportunity is inextricably linked to a larger risk. If the proposed system does not serve the public, the result, we fear, will be an increase in the level of mistrust in the police and in state power more generally.

**Independence from the police:** We are concerned that the public will perceive the proposed system in Bill 103 as a process that does not serve the public any better than the current ineffective police complaints process. The public will not have confidence in a police complaints system that is not fully independent from the police. Without independence, we must assume trust, not build it. To allow any complaints to be investigated or adjudicated by police officers or chiefs of police will undermine the integrity of the police complaints system. Even if the current system is not actually biased against the complainant in all cases, the perception of bias renders

the system useless in the eyes of those people who need it the most.

Both the police and the public will be well served by a complaint system in which complaints are investigated by an impartial third party. The public can be confident that complaints have been thoroughly investigated. Conversely, the police can defend themselves against frivolous complaints by standing behind the investigation of the impartial party that has vindicated them without any question as to the neutrality of that body. Both the public and the police would be well-served by a system in which the determination of whether an officer is engaged in misconduct is made by an impartial third party. This third party must not have participated in the investigation process. Further, we submit that where there is a finding of misconduct, the penalty that the officer receives could be determined by a chief of police in accordance with a specific range of penalties for each characterization of misconduct.

There are many benefits to a system like this. First, the public can have confidence that the determination of whether or not misconduct occurred was determined by an impartial and objective third party. Second, the public can have confidence that, where an officer is found to have committed misconduct, the officer received a penalty that was proportionate to the type of misconduct that he or she engaged in. It is imperative that the public does not view the penalties that are imposed by the chief of police to be arbitrary or unjust. The decision-making for the choice of penalty must be, and must be seen to be, transparent.

Now I'll turn to informal resolution. First, the informal resolution mechanisms in Bill 103 could be enhanced by establishing safeguards to ensure that power imbalances between the complainant and chief of police are minimized. We submit that the most effective way to do this would be to require an impartial mediator to facilitate informal resolution discussions.

Second, the provisions of Bill 103 do not provide for an outcome where no resolution is reached. This is a gap that needs to be filled. Where no resolution is reached, the chief of police may impose a penalty upon the officer. If the officer refuses to accept that penalty, the officer has recourse to a hearing. However, we submit that where no resolution is reached, the complainant should also have the option of proceeding to a hearing. The public will have more confidence in a system in which the outcome of the complaint is formally determined in a hearing than a system in which the complaint is simply disposed of in a clandestine manner without the consent of the complainant.

Finally, I'll speak about third-party complaints. The Attorney General has indicated that third-party complaints "would be allowed if they met certain legislative criteria. However, third-party complaints would only be considered if they met those criteria." Bill 103 is currently structured so that the director has the discretion to refuse complaints from all public interest organizations.

At CLASP, we agree with Justice LeSage that any party should be permitted to make a police complaint. As

mentioned at the outset, we submit that the ultimate goal of the police complaint process is to improve the quality of policing in Ontario. Complaints made by public interest organizations initiate constructive dialogue between police and community organizations and are often an effective way to bridge the gap between police and the communities that they serve.

Further, at CLASP we work with a number of vulnerable groups, the members of which have good reasons to abstain from attaching their names to a police complaint, especially given their own experiences with police. For instance, youth in the Jane-Finch community have good reason to be concerned that if they make a complaint, they may be the victims of police retaliation. The community has seen far too many incidents of this nature—which have gone unaddressed—to believe that there is not a risk of retaliation.

Likewise, a person who is homeless or living in Canada without status has good reason to be concerned about the retaliatory consequences of making a complaint. Public interest organizations can be an effective form of representation for any person who has experienced mistreatment at the hands of the police but has reason to abstain from making a complaint. The organization shields the complainant while allowing the complaint to go forward.

Third-party complaints can also be an effective way to initiate constructive dialogue for a larger group that may not be collectively mobilized. For example, there are many people in the Jane-Finch community who experience police mistreatment on a regular basis, including arbitrary questioning, arbitrary searches and other forms of harassment. When Caring Village asked youth what the role of the police was in their community, 21% of those youth answered that the role of police was “to harass and bother youth,” while only 35% answered that the role of the police was “to serve and protect.”

Despite the fact that these forms of harassment constitute police misconduct, arbitrary stops and arbitrary searches of young black males will rarely, if ever, result in a citizen initiating a police complaint. We often advise against making a complaint in this circumstance because the threat of retaliation may be too great and the current system limits the prospect for any sort of satisfactory resolution. However, an issue like racial profiling of black youth in the Jane-Finch community is a pandemic issue that must be addressed. A public interest organization is in a perfect position to compile evidence and make a complaint on behalf of many members of this community, initiating a necessary dialogue. We submit that removing the director's discretion to refuse third-party complaints would enhance the police complaints system. Further, we submit that the standard should be the same for anyone. If the complaint is frivolous, it will not be allowed in any case. But if there appears to be a basis for the claim, it must be investigated.

Finally, to conclude, we cannot afford to ignore the fact that there is a glaring absence of trust between police and citizens in many areas of Toronto, especially socially

excluded areas like the Jane-Finch community. We submit that improving the police complaints system can be a positive first step in restoring a necessary level of trust in the police and improving police-community relations. However, it will only be a positive first step if the police complaints system is actually improved for the benefit of the people who need it. If this is not achieved, we submit that there is a very real risk that the result will be an increase in the level of mistrust in the police and state power more generally. In our opinion, Bill 103 in its current form is more likely to do the latter. While it is a step in the right direction, Bill 103 is not a sufficient departure from the current system.

We would like to say thank you for having us here today, and we are happy to field any questions that you may have.

**The Chair:** We have just about 12 minutes, so four minutes per party. We'll start with the NDP. Mr. Kormos.

1030

**Mr. Kormos:** Thank you kindly, sir. I appreciate your participation. I'm a fan of this program; I'm also a fan of Osgoode law school. The fact that I graduated from there should not discourage you in any way at all. I'm sure you'll have a far more successful career than I have managed here at Queen's Park. You may or may not know that the Ombudsman—you heard me reference this a few minutes ago—talked as early as May of last year in a speech to the Toronto Police Services Board about section 97 of this bill, which specifically states that the Ombudsman will not have oversight of this yet again new body.

You heard me reference Ms. Aucoin in St. Catharines, a news item today, and many of us are familiar with Ms. Aucoin because her matter has been raised in the Legislature by myself, by Mr. Jackson, who was with the Conservative caucus, and I know Mr. Bradley has advocated for her. He is a Liberal member, her representative. In this particular instance, the Ombudsman persuaded the government to fund her out-of-province treatment, but also stated that the process for applying—because there is a process, it's institutionalized; again, many of us are familiar with it because we've tried to help constituents manoeuvre their way through it. But the process is difficult, it's filled with roadblocks and it doesn't really serve the interests of those people making the applications.

The Ombudsman says that it's wrong to exclude his oversight of a police complaints process—not that the Ombudsman wants to deal with complaints about police, but he wants to be able to be there to point out problems that may occur. You've talked about problems that people have in the community you serve, making complaints that are at the lowest, most grassroots ground level, right?

**Mr. Carson:** Absolutely.

**Mr. Kormos:** Never mind the problems that could be encountered in the institutional bureaucratic process, which could become perhaps even more profound and complex. What do you think about whether or not the

Ombudsman should be able to oversee this process, like he does so many others?

**Mr. Carson:** Well, I watched the Ombudsman speak yesterday morning and I thought that it was a very compelling presentation. I agree 100% that the Ombudsman should oversee this organization and I don't see any good reason why he would not. I agree.

**Mr. Kormos:** Well, I suppose I could be accused of thanking you just because you agree with my proposition, but I appreciate—

*Interjection.*

**Mr. Kormos:** You and your program have prepared an excellent submission and made a number of points. I obviously am focusing very much on section 97. I appreciate your contribution to this process and wish you well.

**Mr. Carson:** Thank you.

**The Chair:** We'll move on now to the Liberal Party and Mr. Crozier.

**Mr. Bruce Crozier (Essex):** Good morning. Welcome to the committee and thank you for your presentation. As you have heard at the beginning of today, and certainly Mr. Kormos is making the point with regard to the Ombudsman not having any oversight role in this particular act—and I respect the fact that you feel that he should have as well—in fact, as his own material says, if you translate the French, he is Ontario's guard dog. So one would ask why he may not have that role.

Well, in the terms of reference that Mr. Justice LeSage dealt with, which I think were pretty broad, quite frankly—the Ombudsman thought they were restrictive, but I think, having read them, they were very broad. I think the history, the precedent was taken into consideration, and that being that perhaps there wasn't any need to point out that the Ombudsman should play part of that role or should not because the Ombudsman has never had that authority in police complaints. So really, we're just carrying on from where it was before.

It's also interesting to note that the Ombudsman appeared as a participant to Mr. Justice LeSage. Not only did he speak with him subsequent to that and subsequent to his speaking out last May to other bodies, but I would wonder—and I can only wonder because our time was limited yesterday and I didn't have the opportunity to ask if in fact Mr. Marin spoke about the Ombudsman role or the need for the Ombudsman role when he was a participant. Granted, when he was a participant, he was then the Ombudsman for National Defence and the Canadian Forces, so he wasn't before Justice LeSage in the role that he has now as the Ontario Ombudsman.

My point is, notwithstanding how someone might feel, the Ombudsman never has had that role, and I believe we're just continuing with that precedent that was set before.

**Mr. Carson:** In our experience with the system, the police complaints system is extremely flawed and has been for some time. To my way of thinking, the fact that the Ombudsman has never been involved in a system that is ineffective does not produce a compelling argument as

to why the Ombudsman should not be involved in a system that we want to be effective. With respect, we're searching for ways to enhance this system. I would certainly submit that the system would be enhanced if the Ombudsman were involved, and perhaps that is one of the shortcomings of the traditional police complaints system.

**Mr. Kormos:** Mr. Zimmer, I'd take him into my firm; wouldn't you?

**The Chair:** You've got about a minute left.

**Mr. Zimmer:** On behalf of the AG's office, I just want to recognize the great work that CLASP has done as a training ground for young lawyers with a real social conscience. Often the folks who work at CLASP move on into positions in the crown's office or the AG's office or the defence bar, and they bring that great experience and sensitivity. So, do carry back to your colleagues at CLASP a note of thanks from this committee and the AG's office.

**Mr. Carson:** Thank you very much.

**The Chair:** We'll move on to the Progressive Conservatives. Mr. Dunlop.

**Mr. Dunlop:** Welcome this morning. It was a great presentation. I went right to the back of your presentation and the actual recommendations you've included in here. This is really what you're after in the end on Bill 103, these types of things to be included. There are 13 recommendations. I notice that the Ombudsman was not one of them at this point.

**Mr. Carson:** No, it's not one of them at this point. It's not something that we focused on. We have tried to focus specifically on the impact that this bill would have on the clients we work with and the community we work with. So from that point of view, the Ombudsman aspect of it was not something we focused on.

**Mr. Dunlop:** Okay. But everything else—you haven't actually included the sections, but what you are saying is that at some point in the legislation or in the clause-by-clause, these 13 recommendations that you've presented today are the changes you'd like to see to the bill.

**Mr. Carson:** Certainly. They are the ways that we think this legislation would be enhanced.

**Mr. Dunlop:** Okay. That's all I have.

**The Chair:** Again, thank you for your presentation today.

1040

#### AFRICAN CANADIAN LEGAL CLINIC

**The Chair:** We'll move on to our next deputation, the African Canadian Legal Clinic, Royland Moriah and Marie Chen.

**Mr. Royland Moriah:** Good morning, members of the committee.

**The Chair:** Good morning. You have 20 minutes to make your presentation. Any time that's left over, if you finish before 20 minutes, will be shared equally amongst the three parties in asking you any questions.

**Mr. Moriah:** Thank you. Good morning, committee members. Thank you for the opportunity to present before you today. My name is Royland Moriah. I'm the policy lawyer at the African Canadian Legal Clinic. With me today is our staff lawyer Marie Chen, who will be assisting me with my presentation, particularly with respect to any questions that might be asked at the conclusion of my presentation.

Just to let you know, the ACLC is a specialty clinic that's part of the Legal Aid Ontario system that provides legal work that's aimed at addressing systemic racism and discrimination in the province of Ontario. We engage in test-case litigation and we've represented litigants at tribunals and courts at all levels, up to and including the Supreme Court of Canada. We also monitor legislation, which is why we're here today, and engage in advocacy and legal education aimed at eliminating racism and in particular anti-black racism.

Needless to say, I think it's without any sort of controversy that I can say that there is racism in Canadian society today. As part of the criminal justice system and some of the other institutions that experience this phenomenon, the police services aren't immune. Whether it's with regard to inappropriate use of police discretion, racial profiling or police use of force, there have been various reports, court decisions, etc., that have acknowledged the impact of racism on policing. Because of this reality, for racialized communities such as African Canadians, the creation of an open, accessible and effective police complaints system is critical. This is very much rooted in the history, obviously, of the formation of the police complaints system. Certainly because of some of the issues that our community has had to face in the past, we have always advocated for a very independent, very accessible and very open system, and we'll continue to do so.

In principle, we do support the amendments that are proposed in Bill 103. We are pleased that Bill 103 moves towards a more independent police complaints system by the creation of an independent oversight body to administer the system. Particularly, it's very important that Bill 103 contemplates a system where the independent police review director has the discretion to determine how complaints will be investigated. So they will receive complaints and, of course, have the discretion, particularly in the case of complaints against individual officers, which are a lot of the complaints that we deal with with our clients, to determine how those are dealt with. However, one of our major concerns is that Bill 103 doesn't provide any guidelines regarding how that discretion will be exercised. There's no clear direction given as to when the IPRD will be required to retain complaints for investigation, and there's a very real possibility that without such guidelines we effectively could return to the status quo. This really comes back to the purpose of the changes that we're trying to make. What Justice LeSage made quite clear was that there is a lack of confidence in the police complaints system, and a lot of that has to do with the police involvement and police control of that

system. What we are seeing with the amendments proposed by Bill 103 is a move away from that; however, we're concerned that although the structure has been put in place, without ensuring that there are specific guidelines, we might go back to what we have currently, which is a system whereby the police will continue to investigate the majority of complaints against themselves.

In our experience, the need to eliminate or reduce substantially police involvement in police complaints is critical. In our experience, that involvement has contributed to a lack of confidence in the system, and a lot of that has to do with several things. One of the things that we see in the media and in our experience has been the overall lack of willingness on the part of the police establishment to actually acknowledge the impact of racism and racial profiling and other racially biased policing issues on the police services. Certainly, this has an impact on how communities see the police as taking those concerns seriously. Secondly, being a clinic that is involved on a day-to-day basis with police complaints and in assisting and representing clients who file police complaints, we know that there are very specific barriers within the complaints system itself that contribute to problems.

Our clients have to overcome the concerns of:

- having to file a complaint at a police station;
- the possibility of reprisal;
- living in the same neighbourhood where the officer who is the subject of the complaint might be working;
- having the complaint investigated, perhaps, by somebody who works within that same police division;
- having an investigating officer who is not willing to understand and accept that there might be issues of racism that need to be dealt with.

All of these things create a barrier, and these were the issues that Justice LeSage was trying to deal with when making some of the recommendations with respect to changes to the police complaints system.

What we are really trying to say is that if we are going to make the changes that we need to make, we have to make sure that the system that we put in place will have the guidelines, specifically for the independent police review director, to ensure that such issues like racism, racial profiling—issues that are fraught; issues that, regardless of the good faith of the particular officer, are best dealt with by an independent body—will be taken by the independent police review director, to be investigated by them only. For our community, that's an important goal of this process; without that, there will certainly be a concern that we have created something that could be useful but lacks the direction to actually deal with these issues effectively.

To that end, we do recommend, particularly, first off, in terms of the investigation of complaints, that the independent police review director should be required to investigate all complaints involving claims of racism, discrimination, racial bias or racial profiling or related allegations and cases that are involving injury not under the jurisdiction of the SIU.

Second, and related to the issue of the investigation of complaints, is the need to adequately fund the police complaints system. This was something that was touched on by Justice LeSage in his report, and it continues to be something that's particularly important when looking at the system that we're trying to put in place. For the IPRD to be effective, we do need to have adequate resources so that it can fulfill its mandate of independent civilian oversight. Any government commitment to ensuring effective independent oversight must necessarily include resources to ensure its proper functioning. Without sufficient funds, it's clear that it would be a mere shell; it won't be able to complete the job that it's supposed to do or fulfill its capacity in providing civilian oversight and ensuring fair and transparent police complaints. Consequently, we are reiterating recommendation 27 from Justice LeSage's report that funding "be sufficient to ensure that the new independent body is able to operate in a manner that ensures public confidence in the police complaints system."

Related to the issue with respect to the investigation is section 57 of Bill 103, which deals with the review of systemic issues. We would propose a change to that particular section—and if you want to turn to it right now, I'll allow you to have the opportunity to do so. In particular, we're looking at section 57, because, again, what we're looking at is trying to move to a system that addresses some of the systemic issues that a lot of communities that use the police complaints system have to deal with. I would suggest the following wording: "In addition to his or her other functions under this act, the independent police review director shall"—as opposed to "may"—"examine and review issues of a systemic nature that are the subject of or give rise to complaints by members of the public under this part and may make recommendations to the Solicitor General, the Attorney General, chiefs of police, boards and any other person or body."

Secondly, related to the issue of funding—because there isn't any specific clause, obviously, dealing with funding within the bill itself—we would recommend that a review clause or a sunset clause be put in place so that the implementation of the act be reviewed after two years, including any issues involving funding, and that those issues be addressed by the Legislature.

I'd like to thank you for the opportunity to provide submissions today. If you do have any questions, I am willing to take those now and hopefully provide you with some assistance.

1050

**The Chair:** Did Ms. Chen want to add anything?

**Ms. Marie Chen:** No.

**The Chair:** Okay. Thank you for your presentation. That leaves us about 10 minutes—just over three minutes per party. We'll start with the Liberal Party.

**Mr. Zimmer:** I was taken by your last comment where you recommended that the "may" be switched over to "shall," so they can in effect make policy recom-

mendations on how to combat systemic racism and so on. Is that correct?

**Mr. Moriah:** Yes.

**Mr. Zimmer:** The way the system is set up now under this bill is that the complaints process is an adjudicative process. So if somebody has a complaint and a decision has to be made on the facts giving rise to that complaint—uphold the complaint, dismiss the complaint or whatever—do you think there's a conflict if you have the same body, the complaints mechanism, doing an adjudicative function, deciding on the facts—this happened, this didn't happen and so on—and mixing that up with a broader policy rule?

**Mr. Moriah:** I'm not quite sure if I follow you in terms of the issue of the conflict. In terms of the suggestion that "may" be changed to "shall," that really is looking to the overall issue of making sure that systemic concerns are dealt with by the independent police review director. I think at this point in time that they are the only body that has the ability to do so.

**Mr. Zimmer:** Right. But my point is, once you turn the commission into making broader policy recommendations, how are you going to separate that out from the commission's adjudicative function, to be deciding the facts of a particular complaint? Would you rather see the commission as an adjudicated body or a policy body, or are you advocating a mix of both?

**Mr. Moriah:** I don't think that it has to be one or the other. I think that there can be a mix of both. Certainly, there would have to be procedures put in place to address any of those concerns. I don't think it's something that hasn't been done before, so I think that it is a possibility. And I think that by being the body that actually receives some of those complaints, they do have the opportunity to review them and determine where there are certain policy and systemic issues that seem to be arising.

**Mr. Zimmer:** So just to take the analogy of the court system, let's take a criminal court judge. The judge is charged with the responsibility of making decisions on facts. If somebody is accused of doing something, he or she has got to sort out the facts. Now, I think that would put the judge in a difficult position if the judge was sorting out facts and then also making policy recommendations, or making laws, in effect.

**Mr. Moriah:** I think that it's a fundamentally different—to me, I believe that's sort of apples to oranges. I don't know if that's necessarily the parallel that we're looking at in this particular circumstance. First off, findings of misconduct are what they are looking at for those situations when we're talking about the police complaints system. What we are trying to do is make sure that issues that are systemic in nature are dealt with by the IPRD because they are independent and because they are best able to address them properly.

The concern is that if we stick with the "may" that's in the legislation, there might not be any decisions with respect to policies that might be important for communities to have addressed.

**Mr. Zimmer:** Thank you.

**The Chair:** We'll move on to the Progressive Conservatives. Mr. Dunlop.

**Mr. Dunlop:** Thank you very much and welcome to Queen's Park this morning. In listening to your presentation, I take it there's no written presentation you have for us.

**Mr. Moriah:** I actually did speak with Ms. Stokes prior to our presentation. We had some problems with our systems yesterday. We will provide a written presentation—

**Mr. Dunlop:** We really appreciate that. You're the sixteenth of 26 presentations, and I'm hearing so far a lot of potential recommendations that are coming forward here for amendments to the bill. I'm not sure what the government's intentions are with a number of these recommendations.

I'd ask you a couple of quick questions. One, if there were no amendments made to this bill, would you still support this piece of legislation?

**Mr. Moriah:** That's an interesting question.

**Mr. Zimmer:** I'm curious, I guess, because there are a number of recommendations—

**Mr. Moriah:** As I said before, I think in principle we do support the bill. But certainly there are changes that could be made—very minor changes—that could make a world of difference in terms of how effectively the police complaints system could operate moving forward.

**Ms. Chen:** I think that the bill presents a huge potential for independence, and it's a promise. But I think the amendments we have suggested today will actually fulfill that promise—the promise of accountability, the promise of independence, and the promise of remedies for our clients.

**Mr. Dunlop:** And I understand that. I'm just curious because they are coming in quite a wide variety of potential amendments, the recommendations people are making. But I'm curious about your organization. Can you give the committee any feedback on the types of complaints you are getting? Can you share that with the committee, the kinds of numbers, etc., that type of thing?

**Ms. Chen:** As my colleague has said, we are a test-case clinic. Part of our work includes assisting people with police complaints, and we do that on a regular basis. Practically every day we get calls from people who have suffered at the hands of the police, and they are wide-ranging issues, some of them extremely serious involving police abuse, and some of them you would term minor, involving verbal harassment or just simply stopping on the street. We assist clients on a wide range. That's why it's linked to one of our recommendations: that if an allegation or complaint involves injury, the independent director should be keeping those complaints, because we've found that with those types of complaints, including complaints involving racial discrimination, the process has not worked at all. In fact, it has revictimized our clients. It's not just an uphill battle; it has been fraught with resistance, and our clients are just completely revictimized by the whole system. So we do get a range.

We find as well that the SIU mandate is way too narrow for many of our complaints because their mandate stops at serious injury. We find that with a lot of complaints that involve police use of force, they don't come up to that standard of serious injury. We find that the police end up investigating those complaints, and that process has been completely problematic.

**Mr. Dunlop:** Thank you very much for your presentation.

**The Chair:** We'll move on to the NDP.

**Mr. Kormos:** Thank you very much for your participation. I don't have a problem understanding your proposal around section 57. The retention of "may" means that the government will effectively control the amount of investigation of systemic issues that's performed by funding, or underfunding. Since the director is not required to investigate, lack of funding does not create a crisis in terms of the application of section 57. That's the problem, Mr. Zimmer. That's the problem. Come on; is Bill 107 that distant in your memory that you can't contemplate an investigative function and an adjudicative function, along with addressing systemic issues and investigating them?

Alan Borovoy was here yesterday. He was concerned about the dichotomy of policy issues being kept within the bailiwick of the director while the director can farm out conduct issues to local chiefs of police. His proposal was that there should be not just a review of the complaint, which means looking at it and taking it verbatim, but an initial investigation to determine whether or not something that might be, in the first instance, conduct is in fact a policy issue. Why in hell would you refer a policy issue, for good reason, down to the chief of police? It's probably the chief of police who set the policy. For instance, if it's the policy of a given police service to use a technique or tactic with citizenry, the victim of that technique or tactic would perceive it and report it as the conduct of that police officer, yet in fact it may be a policy issue: The cop is following orders. He's doing what's consistent with the policy of that police force.

**1100**

I go through this because we're dealing with these, and I'm trying very hard—I'm worried that the government's not going to accept any of the proposals put forward by people like Alan Borovoy, even the points where Alan Borovoy and Bruce Miller of the police association agree with each other—they do, in terms of wanting non-police adjudication.

Do you see that as a significant issue, especially in view of your comments around section 57? Do you believe the director should be required to investigate the initial complaint to make a determination as to whether it's in fact a policy as compared to mere conduct, to avoid that horrible dilemma of sending policy issues disguised as conduct issues down to a chief of police to adjudicate?

**Mr. Moriah:** It's very important, and it does go back to what we're talking about, even in terms of systemic

issues. One of the concerns is, as you said, that Bill 107 isn't that far distant in our memory.

**Mr. Kormos:** I remember it well.

**Mr. Moriah:** There's that sometimes unfortunate idea that there's a disconnect between individual and systemic issues and, because of that, we can separate them somehow and deal with them appropriately in two different manners. We know from the experiences we have with our clients that one of the concerns is that the conduct issues they face often derive from systemic issues within the police services. Unless there is a way in which the director, whether through policy initiatives or through the investigation they receive in the initial investigation of complaints, can address whether or not a systemic issue is at play, the concern is that these issues are going to go back as conduct issues to that particular police service, and they might not be addressed or investigated as properly as they could be had it been done by an independent body.

**The Chair:** Thank you for your presentation, and thank you for your time today.

#### COMMUNITY EDUCATION AND ACCESS TO POLICE COMPLAINTS DEMONSTRATION PROJECT

**The Chair:** We move on then to our next deputation, which is the Community Education and Access to Police Complaints Demonstration Project, CEAPC; Susanne Burkhardt, director of development and community engagement, acting CEAPC project coordinator.

**Ms. Susanne Burkhardt:** Hello.

**The Chair:** Good morning.

**Ms. Burkhardt:** Good morning. My name is Susanne Burkhardt. I am the director of development and community engagement at Scadding Court Community Centre, and I have been for the past four or five months the acting coordinator of the Community Education and Access to Police Complaints Demonstration Project, which is a mouthful. We refer to it as the CEAPC project, so I'll be referring to it that way from now on.

Scadding Court is a multi-service community centre that serves residents in the west downtown area of Dundas and Bathurst. We have a long history of serving a very diverse community, culturally, economically and otherwise. We were involved in the initial formation of the CEAPC project, which is a two-year demonstration project that's focused on making the police complaints system more accessible and available to the specific needs of community members, particularly those who are marginalized due to their culture, race, language, socioeconomic status and other factors.

The CEAPC project is based out of a pretty unique partnership of 39 diverse organizations from across Toronto. The partnership includes legal clinics, community centres, grassroots groups, advocacy groups and a lot more. It also includes the active participation and support by the Toronto Police Service as a project partner, which has been really instrumental in its success. We've worked

quite closely with their professional standards department.

I'd like to provide a brief overview of who we are and what we do, after which I'll outline our partnership's analysis of Bill 103 and the recommendations that we are putting forward. The second part, where I speak about the recommendations, is based on our partnership's analysis, which I've given to you in its long version and as a summary as well. Because we have 39 partners, which includes a number of legal clinics, it's a pretty detailed document with a lot of recommendations.

In 2002, events in our community led to the development of a new area of programming which related to addressing issues of race relations. There was the formation of a local task team on race relations which, over time, identified a number of themes that were in need of attention. These included the relationship between the community, particularly youth and police, as well as the reluctance of community members to file complaints and generally very low levels of awareness about how to even go about filing a complaint. We explored this a little bit further throughout the city and held 17 focus groups which confirmed that the same issues were being experienced in a lot of other marginalized communities around the city. Therefore, we developed a project and in May 2005 launched it with over 30 partner agencies.

Our approach to facilitating access to the police complaints system is to provide community-based intake and support and to proactively educate and raise awareness and knowledge about the police complaint system. At the same time, we recognize that many complaints are symptomatic of a much broader issue of police community relations. For this reason, an underlying theme in everything that we do is to promote understanding and more positive relations between communities and police.

We've worked in six high-needs Toronto neighbourhoods, and in doing that, we basically carry out four primary streams of activity. We offer a community-based intake of complaints and support for pursuing those complaints. We do a lot of outreach awareness-raising. We do a lot of community education, and we hold divisional orientations which bring together police with community members.

In terms of our community-based intake, we've trained over 75 community workers across the city on police complaints, anti-racism, conflict resolution and a number of other topics. That training was provided by university professors, grassroots community groups and members of the Toronto Police Service, so it was a very solid, intensive training process. Many of those who've been trained are actively providing support to people who want to file complaints around the city and support in terms of providing information, letting people know what to expect, providing translation services, cultural interpretation—that kind of thing.

Our first evaluation, which covered the first six months of the project, found that within the six divisions served by CEAPC, we took in 9.7% of all complaints

filed, which was a statistically significant number. In our second evaluation, we found that that number had risen by 187%, so as awareness about the project grew, people were really accessing it a lot more.

We also created a number of resource materials. I've given you the brochures and a bookmark, I believe. All of those brochures were translated into 16 different languages, based on the needs of our partners, and have been disseminated very broadly around the city. We also held two TTC ad campaigns which really were successful in raising awareness. As someone who took this over four or five months ago, I'm astounded by the number of phone calls I get from people just wanting information, wanting to know about the process and how to proceed, and sometimes wanting help, but not always.

We've done 29 workshops to over 400 community members on a wide range of topics. These are really successful, and we're increasingly getting requests from other communities to do workshops. As I mentioned, we also have held a number of divisional orientations, which bring together communities and police for a day-long session and are preceded by a number of planning meetings as well. What these do is build relationships. They create understandings. They let people identify what local issues are and how they might work on them together.

An interesting development is that we've been approached by a couple of other communities around using our model. We're actively working with a group in Hamilton which includes the Hamilton police to adapt our materials for their setting, and have been approached by a group in Ottawa that's interested as well.

We believe that our project clearly demonstrates that increasing access to the complaints system and using this process to create opportunities for dialogue and building relationships between police and communities is both viable and productive and results in positive outcomes. Community-based education and intake seems to really work. People are comfortable in community settings, agencies can provide information and services in a way that meets people's needs, and we also have a capacity for referring people to other sources of information and services that does not exist at all in the current system.

We have, of course, been following the development of Bill 103 fairly closely and very much welcome the review of the legislation, but we do feel strongly that the proposed changes are insufficient and don't provide a lot of reforms that would result in a more legitimate, transparent and accountable procedure. We would really like to see a model that not only allows for but encourages and actually welcomes the engagement of a lot of individuals and communities who currently feel discouraged from coming forward.

1110

We have identified a number of broad themes around which there is concern, which includes a strong emphasis on accessibility. We also have 50 recommendations that are pretty specific and pretty concrete. I'm not going to go through them all, but I would strongly urge you to

consider them as you move forward. As I said, we do have 39 partners, and that's part of why this document is pretty detailed, because we were trying to accommodate all of our partners.

One of our big concerns is the issue of civilian oversight, and I believe I've heard it mentioned before. We really notice that there is a widespread perception among those who have had negative interactions with the police that the current system isn't effective as an instrument of accountability. We don't believe that Bill 103 does anything about this distrust of the system. In response to calls for civilian oversight, it has established the independent police review director, which is a step forward, but our partners believe that the legitimacy of this office is compromised by the fact that control over the complaints process has shifted from the hands of the police into the hands of the Attorney General and that the oversight mechanism is therefore independent in name only.

We also have a sense that power is now concentrated in a few people or in a few positions and really believe that true accountability will only result if the IPRD is accountable to fully independent civilian boards across the province, which should be representative of the diverse makeup of the province.

Another broad area of concern is that the language that's used and the terminology used in the bill is often very vague and creates very little certainty as to how the process is actually going to work. There is a concern that this leaves a lot of power within the hands of policy-makers and that the political climate and interest groups will have quite a bit of ability to influence how the actual bill is implemented. Ultimately, we worry that this vagueness will result in inconsistently applied practices that frustrate the ability of people to actually access the system, particularly the communities that we work with, which face a number of barriers.

A final area of concern relates to the breadth of the mandate of the IPRD and the fact that its powers are highly discretionary. This basically impacts on the whole legitimacy of the complaints regime, as there is not a sense that the IPRD can necessarily administer it in a consistent manner.

I'm now going to speak to a couple of specific concerns that we've had around the issue of access. If I could get a heads-up when I have five minutes left, that would be great.

**The Chair:** Just to let you know, you started at just after 11 o'clock. According to my clock it's about 11:12 right now, so you can speak for at least nine more minutes.

**Ms. Burkhardt:** Thank you.

One area of concern is around outreach and education to diverse communities. We really believe that Ontario's diversity is a reality that has to be explicitly addressed by a public mechanism that aims to provide an equitable and just complaints system.

We agree with Justice LeSage, who said, "Outreach and public education are critical to fostering understanding and public confidence, and the lack of efforts in this

area has no doubt been partly responsible for the current problems.” Our partner organizations know from first-hand experience that barriers caused by a lack of outreach and public education are magnified for a lot of people, such as those who do not speak English as a first language, face literacy challenges, have a disability, are socially isolated, or live in underserved communities.

We also feel that true accessibility demands that complainants have a wide variety of intake mechanisms. There are examples of flexibility with respect to intake mechanisms in other jurisdictions—I think some are outlined in our analysis—and also in the public complaints context of the provincial Ombudsman, where you can do an intake by phone, e-mail, Internet, fax or mail, which are more options than are currently available under the police complaints regime.

We feel strongly that the bill must take linguistic, cultural and other diversity considerations into account in terms of providing information and assistance. There are some specific recommendations around that.

We also believe that our project, as the only one of its kind in Ontario and in fact in Canada that we are aware of, could be considered as a model for public education and assistance with complaints. For this reason, we would recommend that the bill consider mandating the availability of community-based complaints intake to be provided by community-based organizations that are trained and funded to do so. We’re not saying that’s the only way that complaints should be taken in, but we do think it’s one way that complaints should be able to be submitted.

There’s concern about geographic barriers. Even in Toronto, where the current civilian oversight body is located, making a complaint can be intimidating and inconvenient. Geographic difficulties for people in smaller rural or northern communities are even more of an issue. As it stands, the bill permits the IPRD, but doesn’t require it, to establish regional offices. We strongly believe, as did Justice LeSage, that the province should be divided into regions and that adviser groups should be formed in each region. This would address the issue of geography. It would also address the issue of civilian oversight.

A concern raised by a number of our partners is the fact that the bill does not appear to address the issue of accessibility for aboriginal communities, where problems of geography, language and cultural barriers can really converge and access is a strong concern. We have a number of recommendations around that.

We are also concerned that the bill doesn’t impose a positive obligation on the police to identify themselves, which creates the potential for police to act anonymously and, in doing so, avoid accountability mechanisms. We would like to see a provincial standard for identification. We’d also like to go a step further and impose a positive duty on police to ensure that information about complaints procedures is accessible at different points of contact that police have with civilians, including on the street, in squad cars and at police stations. At this point, that information is not that easy to get to.

Another issue that we’d like to raise is the limitation period. At this point, it’s set at six months, and we believe that’s too short. We’ve encountered many situations where it just has not allowed for the time that someone has needed to recover from either emotional or physiological trauma that they’ve actually sustained, and it has kept them from filing complaints. We’d like to see that made longer.

I think I’ll mention one or two more points and then conclude so that we can have some questions.

The informal resolution is another concern that a number of our partners raised. They were troubled by the poorly conceived emphasis that they believe to be in place in Bill 103 around informal resolution. There was a concern that mediators have traditionally not been neutral. As a result, we would like to recommend that only neutral and qualified parties who are not and have never been employed as police officers should mediate informal resolution and that the results of informal resolution should be recorded, publicly available and audited.

I think I may end there. I’d like to echo some of the comments that the previous speakers made around funding for the system and point you towards the recommendations that we have around auditing, because there were a number of recommendations in that area.

I’d also like to thank you for your time and attention and let you know that our partnership would very much welcome the opportunity for more dialogue on this issue. I’m happy to answer questions. I do want to state that I’m not a lawyer. I very much come from a community-based perspective. I’ll do my best to answer any questions you might have. I’m also representing a number of different agencies, but I will do my best.

**The Chair:** Thank you. We have about three and a half minutes left, so roughly over a minute per party. We’ll start with the PC Party.

**Mr. Dunlop:** I just have a quick question. I appreciate the amount of information you brought to us this morning. This demonstration project: Did this take place after Bill 103 was introduced, or has this been going on for some time?

1120

**Ms. Burkhardt:** The development of it started in about 2003, so it was in process. We got funding in late 2004, I believe, so we started actually implementing the project in 2005. I’m not sure of the timeline of Bill 103. I do know that a number of our partners were involved in the LeSage consultations and then sort of moved on to Bill 103.

**Mr. Dunlop:** So you kind of carried on, you sort of paralleled your demonstration project with Bill 103 and the LeSage report.

**Ms. Burkhardt:** Yes. I don’t think it was intentional; it just happened to take place that way.

**Mr. Dunlop:** I noticed you do have recommendations.

**Ms. Burkhardt:** We do, yes.

**Mr. Dunlop:** So Mr. Zimmer is going to have a busy afternoon here. Thank you very much.

**The Chair:** Mr. Kormos for the NDP.

**Mr. Kormos:** Thank you very much. I'm amazed at the goodwill being displayed towards this bill when the fundamental problem, as perceived by so many, is police investigating the police. Yet while this bill creates yet a new body, which is not a police body, complaint about policies or services shall be referred to the local chief of police. Complaint about conduct shall be referred to the local chief, to another chief, or may be retained by the director, yet we know that funding constraints will determine how many actual investigations the director is going to be able to do. I'm amazed that people who have been struggling with the fundamental problem of police investigating the police come here and say, "Oh, it's basically a good piece of legislation." I find it mind-boggling. If the fundamental problem is police investigating police, the fundamental foundation of this bill is for the police to continue investigating the police. How come people aren't concerned about that, and how come people are suggesting that somehow, yes, the bill should be supported because it's a good new start?

Hell's bells. Do you think this is going to be reviewed and amended in the course of the next 10 or 15 years? Not bloody likely.

**Ms. Burkhardt:** We are very concerned with police investigating police and do go through that in our analysis. I didn't—

**Mr. Kormos:** So do I vote for the bill and hope that somehow in the years to come successive governments are going to make it better, or do I say, no, I'm taking a stand: This is not an adequate level of reform?

**Ms. Burkhardt:** That's a discussion that actually was held in many different ways within our partnership. What emerged was a real sense that, "You know what? It has come this far. We're better off to try and put some changes into it that would suit our needs than to try and oppose it." There was a real sense that that would be futile and that it was better to just go with it and try and make it suit the needs. That's the sense I get from the discussions that we held.

**The Chair:** Thank you for your answer. Over to the Liberal Party.

**Mr. Crozier:** With the restraint of the minute that I have, I'll just ask one question.

**Ms. Burkhardt:** My apologies.

**Mr. Crozier:** No, that's fine, and we can read your report as well. Thanks for bringing it.

The length of notification period, the six months: If you do recommend, what time period do you recommend?

**Ms. Burkhardt:** In our recommendations it says up to two years. In our specific discussions, there was that consensus that 12 to 18 months would be ideal. There were some people who really felt strongly about putting it to the two years because there was legal precedent, basically. The lawyers felt that there was legal precedent for the two years. A lot of the community groups felt that might even be a little bit too long, and 12 to 18 months would be ideal.

**The Chair:** Thank you for your presentation today.

R.J. POTOMSKI

**The Chair:** The next deputant is Mr. Potomski.

Just a reminder, Mr. Potomski: You've probably already heard this, but it's 20 minutes for your presentation. You can use all the time in the 20 minutes for your presentation, or you can use part of it and have questions asked of yourself.

**Mr. R.J. Potomski:** I haven't sent you anything and I haven't written anything down. I read this bill and I'm putting in some background on me so you understand why I'm here. I looked at it and I'm seeing what changes compared to what the existing system is and what this new system is. The only thing I see is that you've added some new employees onto the government payroll. I'm not sure if anything else changes.

I want to tell you a story, and really, at first sight, I'm looking at it and saying, is it worth the money and the time to have Bill 103?

Here's my background: There have been a number of issues I have had. I'm from Windsor, Ontario. I'm not affiliated with any agency and I came up here on my own with no third party paying for anything.

Some 20 years ago, I was involved with quite a litigious break-up. One summer, after a couple of years, I had not seen my kids once they got out of school. My access was denied. I had taken my ex-wife to court a couple of times—twice on contempt. The judge each time kept on saying, "One more time." Finally, he said, on August 14—and I remember that date; I forget even what year it was, but I remember August 14—I was to see my children at 10 a.m. come hell or high water, or she might lose custody or get thrown in jail at that point. And I'm only telling you one part of my life story; there are a lot of other issues.

So, going ahead, I'm kind of excited that this 10 o'clock in the morning is coming along, and at 8 o'clock there's a "knock, knock" on my apartment door. It's the Windsor police. Okay. I opened the door. The police officer said he was instructed that there was a warrant for my arrest and he had to take me downtown. I'm on the east side and he's going to take me downtown. Okay. I knew the officer from other issues that had been brought up, that had happened, and he took me downtown. They kept me until 11 o'clock in the morning and said they had made a mistake. They didn't offer a ride back; nothing. I had to find my own way back, and eventually by noon or 1 o'clock, when I got there, she was gone. I didn't see my kids. And she had a valid reason: The police arrested me.

I eventually found out later—

**Mr. Kormos:** Potomski's such a common name; I can see why they were confused.

**Mr. Potomski:** Well, what it was is that I was arrested on the 14th for not appearing in court on the 20th of that month. It really puzzled me. There's a number of things I could point out, and this is one thing.

I went around to different lawyers in Windsor. I felt like I should at least sue them. Off the record—because I'm friendly with a few lawyers and we were talking—

nobody really wanted to handle the case, because it wasn't a big case and they feared reprisal. The lawyers feared reprisal, okay? That's what really got me. I eventually hired a lawyer out of Toronto and we settled the thing to my satisfaction. I was told that because it was a minimal thing—basically, I wanted to get them off my back. I'll give you examples of things, like—this was back when, if you had an unpaid parking ticket, you could get arrested—I'd show up at 10 o'clock on a Sunday morning and there would be a police car waiting at the house to pick me up for an unpaid parking ticket. Now, that's 20 years ago. I want to tell you something that happened last summer.

I was arrested for trespassing on property that I was a tenant at. I asked for a copy of the police report. The cuffs were put on me in front of my business and I asked for a copy of the police report. That's sometime in June, I believe it was, give or take a few weeks in there. To this day, I have not received it yet. Yes, I can go through the whole process and what have you. I don't know who the police officers were. I have no idea, because they don't identify themselves and they don't have to. I have to tell them who I am. They can come and bother me like you wouldn't believe, but I have no idea who they are. They have a badge number, which is not their employee number, and they go through a process—like, they must be very paranoid, and I think a lot of them, or whoever set the system up, probably should get some psychological help.

Now, my daughter had another situation where she made a phone call. The call was a domestic violence call, where my brother had hit her. The police showed up for the trespassing and they ignored that. She filed a complaint. If you want to see something very intimidating, have a 26-year-old go into a police department and sit down with two police officers to talk about something and all they can do is say how she is wrong.

**1130**

Now, I've read this act, and the thing that maybe should change isn't so much whether police investigate the police, which I think is a big issue, but the other thing is the reprisal part. I think the Ontario Labour Relations Board has a very good model for dealing with complaints. If there is a reprisal on any complaint or anything before the board, it's a reverse onus. If you file a complaint with them, they also have somebody from the board who actually acts as a mediator and sits down and talks to the people. They are not associated with either the union or the employer; they're from the board.

If you sit down and you look at this process: The police chief has a lawyer, the director has a lawyer, the police officer has a lawyer. If there is any reprisal, the complainant has no legal help. They don't even have someone to hold their hand. Then, if there is a reprisal—and I'm going to tell you, there were reprisals on my lawsuit; I'm not going to go into all that. If there was a reprisal, this piece of legislation is suggesting that it has to be approved by the Attorney General. Well, I raised a bit of hell on that during my problems last year.

It was just in December that I left church in Windsor on a Sunday morning. It was about a quarter to nine or nine o'clock. My mother had had a stroke the week before and she was in the hospital. I pulled out of the church parking lot, drove three blocks going to the hospital to see my mother, and I got pulled over by a police officer. I asked what the problem was. Well, the van I drive is under a corporation that I am a president of and it's an out-of-town one. He felt he had to find out who was driving the van. He told me point blank that it had an out-of-town plate and he wanted to identify the person who was driving the van. He pulled me over, checked my credentials, and that was his reasoning. I don't know who he is because he doesn't have to identify himself. I just went on my way. Am I going to file a complaint? To what end? To have more harassment from the police department? Because if I do, I have to make a case, I have to spend time, take time off work and everything. There's no help here.

I don't know what the purpose of Bill 103 is. In some ways it seems like it's a labour relations bill to deal with the management of the police department and the police officers. If they have a complaint and take care of a citizen, that might be—I don't know, the movie was *Collateral Damage*, the thing on the side—a collateral issue.

I would ask that if your purpose is to deal with complaints, have it set up, first of all, that police officers have to wear a name tag. That's not a number; a name tag—with a number. If there is a reprisal, it will be a reverse onus so that someone doesn't have the fear of having to make a case. I also would ask that there might be some type of person available, whether it be a one-on-one—I'm not too sure if the funding for this type of operation would be similar to the Ontario Labour Relations Board, but that somebody can be contacted and you might be able to talk to somebody about what is here, what is there. Also, it wouldn't be a bad idea if the mediation could be dealt with by a third party from the government, not from the police department.

This was the other thing I found out last year: They told me that if I file a complaint on that arresting thing, I had to show that they had contravened certain rules. I said, "Could I get a copy of those rules?" They said, "No, it's not available." I'm supposed to have a complaint against something they've done, but the rules aren't readily available?

Through the Solicitor General or through the Internet, I eventually got somebody to send something out to me. But, you know, a lot of people don't have the time. So I think the issue here is, if you have a problem with the police department—and in my experience I can probably talk about 10 or 12 issues—you're best not to complain, because the repercussions could be worse, and you will never know who the police officer is because they protect that.

That's where I'm at with this. I wish this bill had a little more meat as to how you can deal with the common guy or woman on the street. That's where I'm at. If you

have any questions or any other issues that you want to hear, I'm willing to give them to you.

**The Chair:** Thank you, Mr. Potomski. We've used up about 12 minutes, so there are about eight or nine minutes, so three minutes per party. We'll start with Mr. Kormos of the NDP.

**Mr. Kormos:** Thank you very much for coming here. I would invite you to speak with Ms. Stokes, the clerk, about getting compensated for your mileage. You're entitled to it.

Interestingly, people have been hiding behind the judicial robes of Mr. LeSage—government people, by and large—in terms of saying, “Well, if LeSage didn't recommend it, it's not in the legislation.” I note, for instance, that LeSage recommended that the six-month limitation period be maintained but for when criminal charges are laid, and then the six-month limitation period should run from the resolution, one way or another, of those criminal charges. Am I missing something? Is that in the bill somewhere, Mr. Zimmer? I don't see it there, the recommendation by Mr. LeSage.

Mr. LeSage talks about the need—you spoke to this recommendation number 8—for provincial standards for police officers. Some police forces and police services do this; police officers have to wear easily-read name tags to identify themselves. I'm not aware of those standards yet—another recommendation by the Honourable Patrick J. LeSage, author of the report whose judicial robes the government hides behind when it comes to section 97, for instance.

Think about this: If you or any other person who uses this new procedure—which still, by and large, uses police to investigate police; let's cut to the chase—have a complaint about the process itself, no longer a complaint about the police officer or police service, but a complaint about the process itself, you've got nowhere to go. This is because the government, by virtue of section 97, says that people can't go to the Ombudsman to request the Ombudsman to commence an inquiry into the process, just like the Ombudsman has with respect to the Family Responsibility Office or just like the Ombudsman has with respect to the incredibly Byzantine and difficult process that sick people have to undergo in the province of Ontario to get out-of-province health treatment.

So I appreciate you coming. You bring a very human, real-life, real-world—this isn't about statutes and sections; it's about real people. And quite frankly, it's about the relationship between citizenry and their police officers in a community. I thank you very much.

**Mr. Potomski:** There is one thing I've got to add in there.

**Mr. Kormos:** Sure.

1140

**Mr. Potomski:** The original comments that I had, the problem with the police at the beginning: I used to have troubles with the marriage break-up, with custody, access and all that. Once I got the police off my back through a court process, I eventually got custody of my kids. That's

something that legislation doesn't help. You can't get rid of the police if they're bothering you.

**The Chair:** Thank you. We'll move on, then, to the Liberal Party. Any questions?

**Mr. Zimmer:** Thank you very much for your presentation and for coming down from Windsor.

**The Chair:** We'll move on to the PC Party.

**Mr. Runciman:** Thank you again for coming all this way to make a contribution. It is much appreciated. I know that your story with respect to domestic disputes is not unfamiliar. I had a public forum in my own community sponsored by the local bar and certainly that was a major concern from the perspective of husbands or ex-husbands: that there seems to be a real bias built into the justice system in the province with respect to how police and the crown approach these kinds of issues. It's a concern that I think the officials should be taking a look at and assessing the merit in terms of how we proceed in the future with these kinds of situations.

**Mr. Potomski:** The issue that happened to me, I would step up here and say it wasn't so much sexism and sexist people and all this. It was a matter of who you knew, from what I understand, as opposed to the sexism or not, in my case. Like I said, once I got rid of the police department and people my in-laws knew, I eventually got custody of my kids.

**Mr. Kormos:** But, Chair, who you know is still prevalent. Raminder Gill got appointed a citizenship judge without going through the process, I'm sure, because of who he knew.

**Mr. Runciman:** No, no. Don't be so cynical.

**The Chair:** Thank you for your presentation, Mr. Potomski.

#### OTTAWA WITNESS GROUP

**The Chair:** We will move on now to our next presentation, which is a video-conference with the Ontario Witness Group. Good morning, Paul Durber and John Baglow. There has been a slight delay here. Good morning. You have 20 minutes to make your presentation. Whatever time you don't use, the three parties will utilize to ask questions of you. Welcome to the committee.

**Mr. Paul Durber:** Thank you very much, Mr. Chairman. I'm Paul Durber and my colleague here is John Baglow. I believe you have our written presentation, and what we'd like to do is to talk about where we see the bill needing to be strengthened. Particularly, we see some areas such as the objectives of the bill and also some specifics.

Pardon me if my speech seems a little broken, because we're getting the feedback here.

**Mr. John Baglow:** Yes, we're hearing ourselves.

**The Chair:** Okay.

**Mr. Durber:** I believe you have a copy of our written presentation.

**The Chair:** Yes, we do.

**Mr. Durber:** Good; thank you. We think that having objectives for this bill would be especially important for

audits, for understanding the effectiveness of the bill, and particularly for giving people education on this particular bill.

You will see that we note the principles in the Ontario Police Service Act. We don't see in there anywhere issues of accountability, fairness and equity. We do urge the committee to add a statement of what you hope this bill is to stand for. Therefore, we suggest you add values of meaningful accountability and equity to an opening declaration.

I'm going to hand over to my colleague, John Baglow, a discussion of some of our other recommendations, but before I get there I would also like to emphasize that we worry a little about one particular constraint which was highlighted by Mr. Justice LeSage: that there be no more than 50% of IPRD investigators who are former police officers.

**Mr. Baglow:** The Ottawa Witness Group believes that within the proper context, so long as initial hearings, third-party review and third-party investigations are assured, we can expect police investigations to tend generally to be thorough and above board. We're concerned, however, that an actual hearing is delinked from these investigations and indeed may take place only after several more steps in the complaints process. We would strongly support the right to an automatic initial hearing close to the beginning of the process in which a complainant or representative may appear to argue his or her case and in which both parties would table their respective information and evidence, much like an examination for discovery. In the federal government there has been an appeal process where there is an initial disclosure phase. It would, to some extent, resemble that.

This hearing would act as a filter—sorry, did we cut out for a moment?

**The Chair:** Yes, you did, just when you were saying the word “filter.”

**Mr. Baglow:** Thank you. This hearing would act as a filter, revealing to both parties the strengths and weaknesses of the case at hand, and in many instances either precluding further action on the part of a complainant or encouraging immediate remedial action by the chief of police. Certainly, when they brought in the disclosure phase for the appeal system in the federal regime, the number of appeals was cut back.

Our recommendation is that an opportunity for an initial hearing be accorded a complainant upon the completion of an internal police investigation or of an IPRD investigation if the complaint is retained, and that that hearing normally take place no later than three months after the complaint is submitted.

We would also suggest that, rather than reviewing the findings of the chief of police after an internal police investigation—and that's the IPRD's scope of review at the moment—the IPRD would review those findings in light of the evidence brought out at the hearing and be authorized, in addition, to review the hearing process itself.

The IPRD is accorded quite a lot of power, so much will depend upon how those powers are exercised. For

greater clarity and certainty, therefore, the legislation, we feel, should be more explicit.

We recommend that the revised act specify the purpose of establishing this post, identify the specific values that the IPRD is expected to uphold in managing the complaints process—for example, transparency, fairness, accountability and credibility—and define the accountability framework within which the IPRD will carry out his or her duties.

The IPRD appears to us to have too much power in one respect and too little in another. Once an investigation is carried out by the IPRD and a complaint is considered unfounded, the process appears to stop. There is no appeal possible on the part of the complainant, and we refer you to subsections 68(2) and 87(1). Furthermore, if the IPRD upholds the police after reviewing, under subsection 71(1), the findings of the chief of police after a complaint has been initially referred to investigation, there appears to be no right of appeal in that circumstance either. So the scope of appeal for a complainant—and we ask the committee to please put yourselves in the place of a complainant when you're reviewing this legislation; think what it's like for the complainant—their scope is very, very restricted by the current draft of the legislation.

We also recommend—I'm sorry, we've been through the recommendation, I guess, in other words.

**1150**

The IPRD may review, upon the request of the complainant, the finding of a chief of police that a complaint is unsubstantiated or not of a serious nature and choose from a variety of actions under subsection 71(3), but this doesn't seem to include referral to the Ontario commission. A complaint finds its way to the OCPC only when a complainant, after a hearing, exercises his or her option to appeal the outcome to the commission.

We recommend that upon the completion of the review of the findings of a chief of police, the IPRD have the explicit authority to refer the case directly to the commission for appropriate disposition.

I'll hand things over Paul now.

**Mr. Durber:** Thank you, John. On page 4 of our submission, we begin with the question of penalties. We've noted here in Ottawa, for example, that some relatively egregious offences against complainants have resulted in absolutely minimal wrist-slapping. This follows, I think, on John's proposal that appeal on penalty also be permitted. At the very least, we think that the IPRD should specifically be required to review the issue of penalty and, if necessary, be able to refer the issue to the commission. So you will see there our recommendation 8.

As with some other speakers, we are very concerned about access. Police do, whether they wish to or not, exercise a certain intimidation by virtue of their authority, particularly on the young or the marginalized. We would really like to stress that public accessibility to the complaints procedure must be a fundamental component of a successful civilian complaints regime. While we applaud the provision in subsection 58(4), which pro-

vides for public education and assistance, we do believe that the IPRD should be required to establish regional offices.

We also think there should be some guidelines set out in the act for the IPRD to provide a certain standard of assistance to a potential complainant.

We believe that these recommendations to you are with the spirit and intent of the proposed legislation which you have before you, as well as the report from Mr. Justice LeSage. We look forward to hearing your questions, if any. Thank you so much for the opportunity of appearing.

**The Chair:** Thank you. We have almost nine minutes for questions. We'll start with the Liberal Party. Are there any questions at all?

**Mr. Crozier:** I guess not. Thank you very much for your presentation, and we'll forward the time to someone else.

**The Chair:** We'll move on, then, to the Progressive Conservative Party.

**Mr. Runciman:** I would echo the thanks of the committee for your contribution to the process. I'm just curious about the fact that we heard extensively yesterday the issue of whether or not there should be oversight through the Ombudsman's office for IPRD. You haven't spoken to that. I wonder if you have a view related to that issue.

**Mr. Baglow:** Thank you for the question. We didn't get specific about the type of oversight that would be required. We did say that the accountability framework should be spelled out in the legislation. Certainly the involvement of the Ombudsman would be useful, but that doesn't necessarily have to be the solution to this.

The problem now is that a tremendous amount depends upon the discretion of the IPRD, the mindset of the IPRD. So with someone whose mindset is really toward the right of the complainant, for example, we'd be fine; otherwise, not. There doesn't seem to be any real check on the power, or at least on the fairly unfettered discretion of the IPRD, so certainly the involvement of the Ombudsman would be one possibility for accountability.

**Mr. Durber:** Perhaps I could just add to that. In terms of checks and balances, I do believe that it's very important that there be provisions in the act for help to local groups who would be available to help complainants. I think, as the act stands right now, there is a great deal of emphasis placed on police investigation. I'm not sure that that can be avoided. Our group is generally supportive, with some worries, but we do think that some of those worries could be resolved if there were clear checks and balances afforded within the working of the bill, and we don't believe at the moment that there actually are. The Ombudsman is another person from outside. We do think that there need to be checks and balances within the system that is set up; for example, through help lines, through helping local groups and representative and consultative groups.

**Mr. Runciman:** I'm not taking issue with that. I'm just curious, on the other side of the coin, though, about

what your view would be with respect to what you might describe as a serial frivolous complainant. Should there be some sort of a fee attached to someone who engages in that kind of an activity on a regular basis?

**Mr. Baglow:** I think that would really discourage a lot of complaints that wouldn't in their nature be frivolous and vexatious. It seems to us that the bill already contains enough ammunition, if you like, to discourage frivolous complaints without the threat of being fined, in effect, if you put in a complaint that someone finds frivolous and vexatious. We certainly do think that the simple dismissal of a complaint for that reason should be subject to review, but I don't think putting in a user fee for making complaints is the way to go.

**Mr. Durber:** Just to follow up on that, one of the difficulties we have at the moment is that the current system is pretty broken. A lot of people really don't see any potential benefit in lodging complaints. To have further barriers in the way to meet exceptions, I think, would send a signal that the Legislature is actually not interested in solving the broken system, if I could be terribly blunt about it.

**The Chair:** We'll now move on to the NDP. Mr. Kormos will ask his questions.

**Mr. Kormos:** I read your submission and I see an opening comment welcoming the legislation, but for the life of me—as I had occasion to ask people earlier—the legislation seems to do very little to change the fundamental issue of police investigating police. The vast, vast majority of complaints are going to be referred to, if not the local police force, an adjoining police force, where it's going to be active, on-duty career police officers investigating other career police officers. Why are you and so many others so grateful to this government for this legislation when it does so little to fundamentally address the concern, we're told, about police investigating police? What's going on here?

1200

**Mr. Zimmer:** It might just be good legislation.

**Mr. Kormos:** Well, let's find out.

**Mr. Baglow:** Our group is perhaps not as concerned about this, with the proper framework in place, as some others. I come out of the labour movement myself. I'm familiar with the administrative grievance procedure within the federal public service and that's really internally handled as well, but it's always subject to oversight. It's subject to oversight from a third party. It's subject to review. It's subject even to the court system if you have to pursue it that far.

Those kinds of checks tend to encourage, although not always, a clean process. If it were just the police doing the same thing as before, and investigating themselves and accountable to no one, which is pretty much the case now, I would entirely agree with you. But so long as a police investigation is going to be subject to some pretty harsh scrutiny by outsiders, and so long as you get a hearing in which you can put forward your point of view and find out what the other side has, with all of those checks and balances in place, we don't really have as

much of a problem with an internal police investigation as some others might.

**Mr. Kormos:** Mind you, things may well have changed, and probably have, since I practised law, but I recall oh, so clearly how, when citizens complained about police misconduct that would amount to a crime, they got a 20-minute lecture at the local police station by the police officer investigating it about mischief charges and about the prospect of being charged themselves if they falsely accuse somebody else of committing an offence. Boy, if that wasn't a deterrent, nothing was. Those people skedaddled so fast out of that police station, you could see the trail of rubber.

John Clarke, well-known and, in some circles, notorious, spokesperson for OCAP, with the assistance of the very capable Peter Rosenthal, a professor of mathematics and a lawyer, just got himself an award, a judgment, for police misconduct. Why aren't groups like yours and others using Small Claims Court, for instance, more frequently to literally seek damages for police misconduct, rather than resorting to what could amount to in-house procedures like that even being proposed by this legislation?

**Mr. Baglow:** We're a volunteer group, first of all, with no budget—

**Mr. Kormos:** So is Peter Rosenthal.

**Mr. Baglow:** —and we don't pursue claims in Small Claims Court. But on top of that, I really have to say that I would prefer a complaints process for the average complainant who is not familiar with the system and is quite intimidated by it. For them, having to take civil action is simply beyond the reach of most people and certainly beyond the reach of marginalized people and beyond the reach of a number of others who have been in the past subject, if I could put it that way, to abusive authority by police.

Paul, you had some things to say?

**Mr. Durber:** Perhaps I could just add that we agree, Mr. Kormos, that it's very intimidating for people to have to go to police stations. We know a great number of people who don't even want to give their names for fear of reprisal in one way or another. So we think that it's very, very important that there be a good system for intake through the IPRD, that there be a clear presence of the IPRD as close to the ground as possible to stop the very kind of intimidation that people either believe they might suffer from or indeed do.

**Mr. Kormos:** A final point: What about direct election of police services boards? Wouldn't that be democratic, and wouldn't that generate an accountability that doesn't exist now?

**Mr. Baglow:** Justice LeSage actually talked about community advisory boards that might be a somewhat better procedure. Once you have an election, it's game over until the next one. His proposal for community advisory boards—and they're not the same ones that are talked about in the bill—would allow dialogue to take place within the communities and would be another avenue to bring out systemic problems with local police forces.

**Mr. Kormos:** You're right: another LeSage recommendation that wasn't followed.

**The Chair:** Thank you, Mr. Durber and Mr. Baglow, for your presentation. We'll take your comments as well as your presentation into consideration. We thank you for coming to us all the way from Ottawa today.

#### URBAN ALLIANCE ON RACE RELATIONS

**The Chair:** We'll move on to our next presentation, the Urban Alliance on Race Relations. I understand, members of the committee, that instead of Michelle Cho, we have Tam Goossen along with Mr. Dharmalingam—

**Ms. Tam Goossen:** And Sri-Guggan Sri-Skanda-Rajah.

**The Chair:** Good afternoon. You have 20 minutes to make your presentation. You've probably heard the rules—that if you don't use it up for your presentation, the members of the committee can ask you questions.

**Ms. Goossen:** Thank you very much, Mr. Chair. I'm Tam Goossen and I'm the vice-president of Urban Alliance. Audi Dharmalingam is a past president and founding member, and Sri is the president of our organization.

Thank you very much for the opportunity to make this presentation in front of you. First of all, the Urban Alliance on Race Relations formed in July 1975 to promote a stable and healthy multi-racial environment. It's a non-profit organization made up of volunteers from all sectors of the community. Just to emphasize, we're all volunteers donating intensive time for the organization. Through research, education and advocacy activities, the Urban Alliance focuses its efforts on the institutions of our society, including the public education system, the police and justice system, media, employment and human resources policies from different levels of government in order to reduce patterns of discrimination and inequity of opportunity in these institutions.

I'm going to jump right to: In June 2000, the Urban Alliance, together with the Queen Street Patients Council, the Toronto police, the Toronto Police Services Board and other community organizations, held an historic conference called Saving Lives: Alternatives to the Use of Lethal Force by Police. The issues explored included race in police shootings, mental health issues, less-than-lethal technology and barriers to change. The conference proceedings and recommendations are contained in a report bearing the same name. I left two copies with the clerk. The Urban Alliance now participates in a group that is looking at ways to implement the recommendations in that report. This group is being co-chaired by Chief Blair and its membership includes members from the police services board and other community groups.

Not surprisingly, the Urban Alliance was one of the groups that held discussions with Mr. Justice LeSage. Like our colleagues, we supported the principles set out by his report and agreed with many of his recommendations.

We would like to commend the government for appointing Mr. Justice LeSage to do the report in the first place and now, through Bill 103, to make some of his key recommendations a reality.

Because of time constraints, we will focus on a few specific aspects of Bill 103 that we discussed at our conference way back in 2000 and with Mr. Justice LeSage.

First of all, though, I need to emphasize a concern that we share with many of our colleagues that under Bill 103, police are, in essence, still investigating public complaints about the police and that the Attorney General must take necessary steps, including a timely review, to remedy this key shortcoming.

The first thing I want to focus on, actually, is the name change of OCCPS from Ontario Civilian Commission on Police Services to Ontario Civilian Police Commission. In our conference report, under the chapter "Community Policing Defined," there was intense discussion of the important role that civilian oversight bodies of the police, such as municipal police service boards and OCCPS, should and could play in fully realizing the concept of community policing. The dismantling of the police complaints system by the previous government was seen not only as indicative of the government's lack of commitment to true civilian accountability; it was also viewed as most troubling for what it reflected about the absence of any regard or recognition for the statutory role of OCCPS.

Conference participants from all constituencies agreed that community policing is not simply for front-line police officers or police service brass; it is also the responsibility of all who purport to hold institutional responsibilities. No agency can maintain credibility with complacency. It behooves all to participate and to reach out to explore the possibilities of true community policing.

1210

In the LeSage report, in expressing significant frustration with the complexity of the current system, community groups emphasized the fact that they did not understand the role of OCCPS, and criticisms were made of the commission for failing to effectively provide the needed oversight within the complaints system. Further in the report, Mr. Justice LeSage commented on how OCCPS' many roles—investigative, adjudicative and appellate—may in some cases lead to difficulties.

Our recommendation: It is our opinion that, in addition to a new name change, it is important to review and clarify the many roles and functions of OCCPS and how they relate to the new independent police review director and its office. It's also important that the finding of this review be made public to the community so that there will be no confusion about the two civilian oversight bodies.

Second is the appointment process of IPRD. One of the key recommendations of our conference report is on transparency and accountability. Accepting that effective and credible leadership is the key to progress in community policing, the report recommends that the com-

munity have an increased voice in the appointment process of key policing positions, including the chair of OCCPS, the director of the SIU, chairs of police services boards and chiefs of police services. The process of these appointments should be characterized by transparency and public accountability and should consist of public consultation hearings by the appropriate minister or police services board prior to such appointment.

For an actual example, prior to the appointment of Chief Blair, the Urban Alliance was one of the community groups that had participated in the public consultation organized by the Toronto Police Services Board to give input on what we expected from the chief of police. The process itself was an important piece in rebuilding the trust between the community and police. We recommend that the Attorney General should seek community input on the criteria for choosing the IPRD. The process used by the Toronto Police Services Board should be used as a "best practice" guide in this respect.

Third is the annual report and review of systemic issues. In the case of the special investigations unit, the individual and collective investigations of the SIU comprise a unique body of information related to the use of force by police officers which could be analyzed and utilized to make observations related to trends in the use of force and recommendations regarding changes or improvements in such usage. The director of the SIU is ideally positioned to undertake analysis and make observations and recommendations for the benefit of the public and the police.

We support that the IPRD will file an annual report with the Attorney General. What we would like to further suggest, though, is that this annual report go beyond the general affairs of the office of the IPRD to include a review of systemic issues that give rise to complaints and make recommendations to the appropriate governing bodies—the Solicitor General, Attorney General, chiefs of police and police services boards. As well, this annual report should contain IPRD efforts to provide public education and assistance about the public complaints system. This expanded annual report and recommendations for action must go to the Legislature and be actively shared with the community in public forums.

Fourth is resources. On the issue of adequate and sustained funding for this new office, the relevant section of the LeSage report bears repeating:

"Almost all of the groups and individuals spoke about the importance of properly resourcing the complaints system.... In 1996, its last full year of operation, the police complaints commission had an annual budget of \$4.1 million and the board of inquiry had a budget of \$0.6 million. OCCPS had a budget of \$0.7 million. When the police complaints commission and the board of inquiry were abolished, the OCCPS budget was increased by about \$1 million. As a result, almost \$4 million—that's close to 70% of the funding—was withdrawn from the complaints system."

Considering that Ontarians pay \$2.8 billion each year for public policing, Mr. Justice LeSage recommended

that funding must be sufficient to ensure that the new independent body is able to operate in a manner that ensures public confidence in the police complaints system. Our recommendation: We couldn't agree with him more.

In conclusion, we would like to share with you the words of wisdom of a former Justice of the Ontario Superior Court, George W. Adams:

"Policing is the provision of an important public service. However, unlike most public service providers, the police are given extraordinary powers to detain civilians and, when reasonably necessary, to prevent death or serious injury to themselves or civilians, to use lethal force."

Review and complaint mechanisms are therefore essential to ensure that the police are accountable for the use of those extraordinary powers.

Bill 103 is an important first step towards the rebuilding of accountability, trust and respect between the community and the police, but there remains a lot to be done. Thank you.

**The Chair:** Thank you for your presentation. Do you want to add anything more or is that basically your presentation?

**Mr. Audi Dharmalingam:** We can take on the questions.

**The Chair:** Okay, great; thank you. We have about three minutes per party, and we'll start with the Conservative Party.

**Mr. Dunlop:** We have no questions.

**The Chair:** The NDP: Mr. Kormos.

**Mr. Kormos:** Thank you kindly for your comments. Appointment process: Let's take a minute to reflect on, let's say, the Environmental Commissioner, Gord Miller, or the Ombudsman, André Marin, both of whom are officers of the assembly who were hired as a result of a job posting, applying for the job, being vetted by an all-party committee and being approved by an all-party committee. Both of them are people who have been fearless in the performance of their roles. Let's compare that with Barbara Hall, for instance, who didn't apply to any—the position of commissioner of the Ontario Human Rights Commission: Once the vacancy was there, it wasn't in the Toronto Star jobs column. People didn't apply. She's a political appointment—and not incompetent; far from incompetent. But contrast her behaviour—because when Bill 107 was announced, for instance, she had proverbial pom-poms in her hands cheering on the government with respect to Bill 107. I just say, that's the contrast between an officer of the assembly and a political appointment.

How do we prevent a political hack from enjoying pork-barrel patronage in the appointment? Are you suggesting that the role of IPRD be that of an officer of the assembly?

**Mr. Sri-Guggan Sri-Skanda-Rajah:** If I may take that question—thank you, Mr. Kormos. That would be the ideal, considering the history of the police complaints process and the manner in which people are being sel-

ected, people who are competent, but the way the process was handled lost the confidence of the community. The community was not satisfied with the way the results were being handled, the adjudications, etc.

**Mr. Kormos:** While we're talking about that, is there any role for provincial appointments—again, more often than not political hacks to local police services boards, who are really the first level of police oversight, aren't they? It's the first civilian level of police oversight. Why the heck are we tolerating provincial appointments of unelected people—not always, but almost always political hacks—to those very important positions?

**Mr. Sri-Skanda-Rajah:** Offering an individual perspective, the best way to win the confidence of the community, especially racialized and marginalized communities, is to make this appointment an appointment of the Legislature so that the report comes directly to the Legislature. It also then explains why the Ombudsman doesn't have oversight into this particular matter. I believe there's a way that activity is being excluded. That is, in my view, the best way to regain that confidence. And it will show the commitment of this government if it ventures that route. The director's report filed with the Legislature could be shared with the Attorney General and all other relevant ministries that have responsibility for policing services. That's my recommendation.

My other issue, if I may add to that, is that communities for over 30 years have been demanding civilian investigation, reporting and decision-making, another fundamentally important principle in winning their confidence. A whole number of people just do not go and make complaints.

1220

Sometime earlier on, somebody talked about intimidation and reprisal. When I used to be the legal worker for the black community in the late 1970s, I personally witnessed that type of intimidation, going to assist a person to lay a complaint when the complainant's office was at Lawrence and Yonge Street, and listening to the sergeant basically telling the guy, "Just forget it," and leaving the place without filing a complaint. Of course, his assumption was that I was a typical non-assertive south Asian, whereas I was there to assist the gentleman. It was only after I asserted myself as his agent with the right to file a complaint that the complaint was written down. We have come a long way from there; there are improvements. However, I think we have to go that step further and ensure total independence.

**The Chair:** Thank you. We'll move to the Liberal Party.

**Mr. Zimmer:** Thank you very much for your submissions. The Urban Alliance on Race Relations has been around since the mid-1970s—1975. So you've got 30—

**Ms. Goossen:** Yes, 32 years.

**Mr. Zimmer:** So 32 years of experience in this. In many ways you are the leader in this—

**The Chair:** Mr. Zimmer, could you please move your microphone a little bit closer?

**Mr. Zimmer:** Your organization was one of the early leaders in this field. We've always enjoyed and looked forward to your submissions, which we shall consider carefully.

**The Chair:** No further questions?

We thank you for your presentation today.

**Mr. Dharmalingam:** Just a comment, sir.

**The Chair:** Certainly.

**Mr. Dharmalingam:** As Mr. Zimmer said, I have been involved with the alliance since its inception, and I have been coming to this organization a number of times, except I find the number has kind of dwindled a little bit. A lot more audience used to come down here.

My concern is the racist issue in the interests of the community and as individuals, basically. What we would like to see is that when we come before this kind of committee the issues are taken very seriously, and the perception you're going to give the community is how you are going to create the trust and confidence. We are not saying the police are bad, but the thing is, there is an accountability factor we're talking about. I have yet to find out who is accountable to whom. I keep asking the questions, and I'm here to get an answer. So I'm saying that when we come before this kind of body, we need to find out who is accountable to whom. Are the police accountable to themselves, or to a body like this, or to the chief? We don't know that. I have been struggling with it for about 30 years, so I would like to go back with a feeling that somebody is listening, somebody is going to do something in a very sincere—the community gets the message: "Hey, they mean business," and that the police get the same message also. They're all good cops, but they need some accountability factor, and you are the body that can do that: that the person you are going to appoint is much more independent, has some guts and backbone to do these kinds of things. Thank you.

**The Chair:** Thank you very much. We'll take that into consideration as we consider the bill tomorrow on a clause-by-clause basis.

**Mr. Dharmalingam:** Thank you.

**The Chair:** So we'll continue our deputations—

**Mr. Kormos:** Can you assure us of that, Chair, that we'll take it into consideration?

**The Chair:** I can just speak on behalf of myself that I will take it into consideration.

We are recessed until 2 p.m.

*The committee recessed from 1225 to 1406.*

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Chair:** I call the meeting of the standing committee on justice policy back to order. We'll continue our public deputations.

Our first deputation for this afternoon is the Psychiatric Patient Advocate Office; Mr. David Simpson, director, and Lisa Romano, legal counsel.

Good afternoon, and welcome. Basically, we're allowing 20 minutes per deputation, and then if there's any

time left after your presentation, we'll just do questions from the three parties.

**Mr. David Simpson:** Good afternoon. My name is David Simpson. I'm the acting director of the Psychiatric Patient Advocate Office. With me today is Lisa Romano, our legal counsel. We would like to thank the committee for the opportunity to share our recommendations with you in hopes that they will be adopted to strengthen Bill 103 and create a truly independent police complaints process that has the confidence of the people of Ontario.

We are pleased that the government of Ontario is considering establishing an independent police review system. Unfortunately, Bill 103 will not create the independent process envisioned by the people of Ontario, nor will it enshrine necessary and needed civilian oversight and accountability in the review process. By striking out one single word in this legislation, the word "referral," the objective could be achieved—a simple yet monumental change.

We need a police complaints process that has strong civilian oversight, a process that is fair, a process that is transparent and that can withstand scrutiny, and one that will allow the Ombudsman of Ontario, as a last resort, to review concerns raised by the people of Ontario. Let me begin by saying that many of our recommendations are based on the premise that a truly independent commission needs to be established. However, if that is not to be, you will note that we make comment on how to improve the current provisions in Bill 103.

The Psychiatric Patient Advocate Office, a rights protection organization, provides independent and confidential advocacy and rights advice services to consumers of and those seeking access to mental health services. We work to empower consumers to make informed decisions about their care, treatment and legal rights. In 2005, we had more than 25,000 patient contacts and provided service in 48 languages.

Some consumers of mental health services inform our office of alleged police misconduct but fail to complain formally out of fear of reprisal by the police and frustration with the existing complaints process. Our clients complain that the system is dismissive of complaints lodged by individuals with mental health histories or because it is alleged that the complaint constitutes "part of their illness," while others say they are discouraged from filing complaints or that their complaints are not investigated fully or fairly. Due to the vulnerability and discrimination of many mental health consumers, there is a profound power imbalance between consumers and the police. Failure to respond adequately to legitimate complaints of police misconduct fails not only the wronged person but the public, the police and the government. The current police complaints process does not have the confidence of most mental health consumers and their families.

On page 7, you'll see that we talk about the need for an independent civilian body. The fundamental flaw with both the current complaints process and the process articulated by Bill 103 is the lack of civilian oversight.

Many people, including consumers, are reluctant to lodge complaints regarding alleged police misconduct because they do not have faith in the process that permits police officers to investigate other police officers. The process is perceived as being designed to protect the police instead of the public interest.

In April 2005, Justice LeSage released a report regarding the findings and recommendations based on his thorough review of the police complaints system. The number one recommendation was the creation of an independent civilian body to administer the public complaints system in Ontario. The Attorney General committed to doing so, but sadly, he has failed with Bill 103.

In our opinion, the proposed legislation does not represent a significant change from the current regime, and it is not independent. Although an independent police review director is established to deal with complaints, there is no guarantee of an independent investigation because the director can refer complaints to the police, who will then investigate themselves. The PPAO believes the potential exists for the director to refer the majority of cases to police forces due to funding and external pressures, thus undermining the independence promised to Ontarians.

Bill 103 also endorses a two-tiered system where there are different procedures for complaints respecting officer conduct versus policies and services. The PPAO recommends that all complaints should be handled in the same way. Policy complaints are as important as misconduct and work performance complaints, as policies can potentially affect the lives of many people. As you heard yesterday, the ARCH Disability Law Centre agrees that there should not be a distinction between conduct and policies, as "the conduct of officers is often a reflection of a policy within the police services."

On page 10 of our submission, you'll see our comments regarding the independent police review director. Instead of being appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, the director should be responsible to the Legislative Assembly. The PPAO would support any move to increase the autonomy of the director, as it would provide him or her with the necessary independence to work without interference or the potential of real or perceived conflict of interest.

The patient advocate office is in agreement with restrictions on employees of the new body requiring that they not be police officers, but we feel it should be bolstered to preclude former police officers from being employees. Our rationale is that former police officers may feel obligated to protect those officers being investigated due to their similar and shared experiences.

You'll note that we also comment on the review of systemic issues. The director has the ability to "examine and review issues of a systemic nature" pertaining to public complaints and to make recommendations to various organizations and government bodies. While the PPAO supports the examination and review of systemic issues, we are concerned that this power will be akin to a

toothless tiger if the director is not required to investigate systemic issues. The director must also have the ability to conduct own-motion investigations and have authority to enforce recommendations. Any recommendations should also be made available to the public, either through special reports or the annual reporting process.

Ms. Romano will now continue with the remainder of our submission.

**Ms. Lisa Romano:** The first topic I am going to speak about is access to the complaints system. This can be found on page 12 of our submission. The complaints process needs to be as user-friendly as possible to make it accessible to all Ontarians. There are several ways in which this can be accomplished.

The first means of achieving accessibility is to ensure that third parties are able to make police complaints. Third parties should specifically include community organizations and advocacy groups. Currently, Bill 103 is unclear and confusing about the role of third parties. The PPAO has heard of many complaints that go unchecked simply because the individual does not have the capacity or ability to make a complaint in their own right due to their illness or disability. Many consumers of mental health services may not always recall the details surrounding their interaction with police. On the other hand, friends, family members or staff at community organizations who were either present during the incident or made aware of the details shortly afterwards may be in a position to assist.

Some consumers may have more pressing issues in their life to address than police complaints, such as finding accommodation or employment or focusing on recovery. Some consumers don't have a fixed or permanent address, so it's difficult for them to receive correspondence or to be kept informed of the progress of their complaint. Involving a third party would take care of some of these concerns.

Individuals should be given the opportunity to have a person of choice to provide support and assist with their complaint from initiation to resolution. Many consumers would appreciate having this support, as the process can be stressful, intimidating and overwhelming.

The PPAO also believes that police officers and staff should not be prohibited from bringing complaints as they are in a unique position to be aware of possible wrongdoings committed by other officers or problems arising from egregious police policies.

Whistle-blower protections should also be put in place to safeguard the rights of an individual who has the courage to step forward to report inappropriate police actions.

Another way to increase accessibility is to permit complaints to be made by a variety of means and with linguistic assistance. Instead of only allowing written complaints, individuals should be able to submit them verbally by telephone or in person. A writing requirement makes the system inaccessible to those with special needs, such as those people who are functionally illiterate or who are unable to communicate in English or French.

The LeSage report noted the linguistic and cultural diversity in the province and the need for accommo-

dation. We believe that there should be service provision in a multiplicity of languages at no additional cost to the complainant for such things as complaint forms, written materials, support services and translation at hearings. Education and outreach programs must also take the language, communication and cultural needs of individuals into account.

Education is a powerful tool to effect social change. Many consumers of mental health services either are fearful of or do not trust the police. This trust must be re-established, and one of the easiest ways to do so is to have police officers undergo regular education about interacting appropriately with persons with mental illness and being sensitive to the stereotypes and stigma that many consumers live with on a daily basis.

We also recommend the establishment of various advisory groups respecting vulnerable populations to assist with the education of police and the public, in addition to analyzing systemic issues endemic to these groups and providing advice to the director.

Education for consumers, families, service providers, advocates and other stakeholders regarding the police complaints process, how to access it and how to make complaints is also essential. The LeSage report advised that public education about the system had been virtually non-existent for several years but is critical to fostering understanding and public confidence in the system. People must be aware of their rights before they can exercise their rights.

Although Bill 103 says that the director shall provide publicly accessible information about the process and arrange for the provision of assistance to the public, it doesn't provide any details as to how this will be accomplished, nor does the government commit to any public funding. Both details and funding are necessary.

The PPAO also supports the LeSage report's recommendation that individual police services must participate in educating the public. At a minimum, each police force should appoint an officer or multiple officers to disseminate information to the public and respond to public inquiries and complaints.

All Ontarians must also have access to the complaints system, irrespective of their location or where they live. The LeSage report acknowledged the need to recognize the geographic diversity of Ontario. However, Bill 103 does not fully support this recommendation and merely says that the director "may" establish regional offices.

One final method of increasing accessibility concerns limiting the power of the director to refuse complaints, which can be found on page 15 of our submission. The director is afforded broad powers to refuse to deal with public complaints under Bill 103. We are concerned that meritorious complaints will be dismissed for reasons of administrative efficiency or lack of education or discrimination concerning mental illness.

Individuals have no mechanism of appeal if the director rejects their complaint. Thus, we recommend that complaints be dismissed only if the complaint is clearly without merit and there is no likelihood that further

investigation will establish merit. Complainants should have a right of reconsideration by the director, a right of appeal to the Ontario civilian police commission and, as a last resort, a right to appeal to the Ombudsman.

If the proposed legislation isn't amended to reflect our recommendations, at a minimum, definitions should be provided for "frivolous and vexatious," "made in bad faith" and "public interest," terms that are used with respect to refusing complaints.

I'm now going to turn to the topic of limitation periods, which is found on page 17 of our submission. Bill 103 says that a person can only bring a complaint within six months of the alleged misconduct. We feel this time frame contravenes the general limitation period of two years for most civil actions, as found in the Limitations Act.

A short limitation period is particularly onerous for consumers of mental health services. Due to the cyclical nature of many mental illnesses, some clients may not be able to assert their rights for an extended period of time. Due to the stigmatization and lack of respect for the rights of persons with mental illness, some victims may not realize that they've suffered an injustice. Others may realize that their rights were violated, but they were initially too vulnerable to take action or were concerned that it would impact on their level of access to services and supports in the future. Thus, the short time frame precludes many individuals from exercising their rights, and we feel it should be extended to two years.

#### 1420

I'm going to speak for a few moments about informal resolution, and that can be found on page 18 of our submission. Bill 103 permits informal resolution in certain circumstances when a complaint is thought to be "not of a serious nature." While the PPAO agrees that informal resolution can be useful, we must be mindful of the inherent power imbalance in such a process. Complainants may feel compelled to agree because otherwise their complaint may be rejected. Forced mediation can also have the effect of revictimizing the complainant.

Several changes should be made, in our opinion. First, it should be the director who should suggest the use of informal resolution. Second, the term "not of a serious nature" should be defined, otherwise the referral of such complaints is susceptible to subjectivity and abuse. Third, there should be a written acknowledgement prior to engaging in informal discussions to indicate that the complainant was informed of the process. Fourth, the mediators should be neutral parties with no ties to the police. Fifth, statistics should be maintained about the numbers and outcomes of times when informal resolution is used. And finally, complainants should be able to receive legal advice and assistance.

On page 21 of our written submission, we discuss our position regarding the rights of persons making complaints, that they would be better protected with the additional oversight of the Office of the Ombudsman. Unfortunately, section 97 of Bill 103 explicitly prevents the Ombudsman Act from applying.

André Marin, the Ombudsman of Ontario, has spoken about the dangers of not allowing his office to have jurisdiction over police complaints. He has asked, "Who will guard the guards themselves? Who will keep this new provincial body in check and independently investigate complaints against it?" He also points out that Ontario will be the only province without external accountability of its complaints system. The PPAO agrees with the assertions made by the Ombudsman and that the Ombudsman should have jurisdiction over the police complaints process.

The last topic I will discuss is police identification, and that can be noted on page 23 of our submission. To initiate a complaint, individuals must provide some sort of identifying information about the police officers who are the subject of the complaint. This can be a huge obstacle. Some clients may have difficulties seeing or remembering the four- or five-digit badge number of the officer, especially if they are agitated or if it's dark where they are. It can also be hard for clients to report sufficient details about an officer's physical description due to the fact that some officers will look the same in their uniform. Many complainants are too intimidated to ask officers at the time of the incident for identification. When PPAO clients have asked for an officer's name or badge number, they are often denied such information.

The need for name tags was recognized by both the LeSage report and various police forces across the province, including the Toronto Police Service, who now require officers to wear name tags. Thus, the PPAO recommends that the legislation require officers to wear visible name tags as it will heighten accountability.

Mr. Simpson will now conclude our submission.

**Mr. Simpson:** The Psychiatric Patient Advocate Office is pleased that the government is changing the province's police complaints system. However, there are many flaws with the proposed system under Bill 103, most notably the failure to establish a truly independent civilian body. This is extremely disappointing given the input from Ontarians and the resulting LeSage report.

We encourage the standing committee on justice policy to consider our recommendations and to implement them to strengthen the police complaints process and bring justice to those who are most vulnerable and marginalized.

As the proposed legislation represents an opportunity to shape the delivery of one of our most important civic services, we urge you to seriously consider adopting our recommendations, to the benefit of all Ontarians.

**The Chair:** Thank you. We have about a minute left. Is there anyone who has a pressing question?

**Mr. Kormos:** Yes, I do.

**The Chair:** All right. Mr. Kormos.

**Mr. Kormos:** First: just an incredibly articulate, bold, thorough and intelligent analysis, and I appreciate it very much.

Informal resolution: That's not new. That existed in the 1997 legislation, and the language is identical. I think one of the most frustrating things is that they're not

talking specifically—that is to say, the government—about, let's say, a mediation program. Lord knows, after they abolished the Human Rights Commission, which is of course what they just did with Bill 107, and all of the great potential for mediation that was contained within that, I'm worried that the informal resolution, without the disciplines and safeguards that are inherent in a professionally functioning mediation structure, is not mediation.

**Mr. Simpson:** I guess that's part of our concern as well: Is it going to be an informal process just to make complaints go away without careful review? I guess that's our concern. There are things at times that do go to mediation that would be better to go to investigation because of the importance of the issue or the possibility to make systemic change. So I think that's why we think that this section needs more attention.

**Mr. Kormos:** Which is why I've presented a motion that requires that the director approve the informal resolution if it's being proposed by a chief of police, that it has to be approved before it can be engaged in by the director, which implies the process as well.

**Mr. Simpson:** Right.

**The Chair:** Thank you. We're out of time, but, Mr. Zimmer, you have a very brief question?

**Mr. Zimmer:** Yes, just an observation. Your last sentence was that you wanted to see a system that was fair for "all Ontarians." I've listened very carefully to your submission. I have in my mind that the psychiatric patients are whom you represent, and on the receiving end of the complaints, of course, are the police officers. But I'd be very interested in any observations you might have about ensuring that the people on the receiving end of the complaints receive a fair shake in this process. It seems to me that we've just heard it from one side of the equation, so how do you balance it off to ensure that the police officers on the receiving end of the complaints, in very difficult circumstances, in a lot of cases, dealing with psychiatric patients—that their rights, if you will, are guarded?

**Mr. Simpson:** I guess I would say that we've got to remember that our clients are very vulnerable, and there's often a power imbalance between them and the police officers. But if you look at the cover letter to our submission here, I think we recognize what you're saying, that the police need to be able to do their job unimpeded by concern that their actions will come under unwarranted scrutiny. That's some of that. But again, it's about educating police officers, having consumer survivors part of that education, having local police departments set up advisory committees to work with police where there's that intersection of policing and mental health issues so that the public is well served. Hopefully, our comments haven't been taken as a swipe at the police, because that's not what's intended. Our whole presentation—I hope that what you'll get from this is the need for this system to be truly independent, that complaints not be referred back to local police departments for investigation and referral because that's no different than what

we have right now. So let's make it truly independent and strike out that word "referral" to local police departments.

**The Chair:** Thank you. Just to be fair to the—

**Mr. Dunlop:** We're fine.

**The Chair:** You're fine? Okay, thank you. Thank you for your presentation.

**Mr. Simpson:** You're welcome.

#### ONTARIO ASSOCIATION OF CHIEFS OF POLICE

**The Chair:** The next deputation is the Ontario Association of Chiefs of Police. I think there's been a change here. We have Deputy Chief Chuck Mercier, Bruce Brown and Brian Fazackerley. I hope I got that correct.

**Mr. Kormos:** Chair, while they're being seated, I want to thank Mr. Fenson. It is a very, very good and thorough briefing note on the issue of "clear and convincing," and a good read. Thank you kindly.

**Mr. Avrum Fenson:** You're welcome.

**The Chair:** Good afternoon, and welcome. So again, the rules are basically that you have 20 minutes to present, and in any time that you don't use during your 20 minutes the three parties will have an opportunity to ask you questions.

**Mr. Chuck Mercier:** Thank you, Mr. Chair. The Ontario Association of Chiefs of Police, the OACP, is pleased to make its submission with respect to Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act. We were involved throughout the consultation process that led to this legislation and we remain keenly interested in it.

1430

With me today are Bruce Brown, director of legal services for the London Police Service, and staff inspector Brian Fazackerley of the Durham Regional Police Service. We have come here today as representatives of Ontario police leaders who are responsible for administering and overseeing the operations of police services across the province. Of particular interest to us is the manner in which we interact with and serve our communities in that context.

Our statutory mandate at section 41 of the act, which will remain unchanged, includes "ensuring that members of the police force carry out their duties in accordance with this act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force." This may be contrasted with the roles and interests of other stakeholders, including police bargaining agents who, while having a vested policy interest in the fairness and effectiveness of the process, bear no statutory responsibilities for and play no direct role in the day-to-day performance management of police officers as do we, the police chiefs.

It is up to you, our elected decision-makers, to enact good public complaint legislation that serves the interests of all the communities, including the men and women

who serve as police officers in Ontario. We are here to comment on areas of the legislation where positive changes are proposed and to outline areas that we feel need to be reconsidered. Let me be clear: Police leaders in this province support a complaints process which is fair and effective. Any process which seeks to distance us from the people we serve in the area of public complaints will not be supported by the Ontario police leaders.

The OACP has long been a proponent of civilian oversight in the complaint process. The OACP favours a complaint process that is effective, efficient and, above all, fair in both substance and appearance for the complainant and the involved officers, as well as to their police service. We expressed this opinion to Mr. LeSage as well as to Minister Bryant on a number of occasions. There seems to be a widespread misconception that civilian oversight in the complaint process does not currently exist. This is not true or accurate, in our view, and we feel that, overall, the experience of the past 10 years with the current system amply supports our position.

The legislative policy direction in Bill 103 seeks to make the role and function of the independent oversight aspects of the process more obvious and apparent. To accomplish this, distance is being placed between the chief of police and the members of his or her community at the precise point where that community member becomes aggrieved with police services, policies or officer conduct.

Efficiency, effectiveness and timeliness of a police chief's direct response to a citizen's complaint will clearly be affected by this system. This is because the complaint must first be processed and screened by an independent police review director before the chief ever sees it. The spontaneity and personal touch that might now attend local complaint intake is being supplanted by the policy requirement to ensure independent oversight at the earliest point of the complaint initiation. We feel that this systemic cost is unwarranted in the vast majority of police complaints.

A general comment is that there will be administrative confusion in dealing with civilian oversight of complaints, since the administration of the public version will rest with one minister of the crown while another minister continues through a commission to oversee internal complaints as well as the statutory appeal function.

We do recognize, and we so indicated to Justice LeSage and Minister Bryant, that some changes were necessary in the civilian oversight process. One change that was made which we endorse is found in sections 66, 67, 68 and 69. The test for holding a hearing into misconduct is now "reasonable grounds to believe" rather than the former test of "may constitute misconduct." We believe that this measure will reduce the number of unnecessary hearings.

Subsection 85(6) states that sick time credits may no longer be used for a disposition without a hearing penalty pursuant to clause 85(1)(e). The OACP is in agreement with this measure. Having said this, the OACP seeks to bring your attention to some anomalies and procedural

problems that we believe can only be addressed in the legislation itself and cannot be corrected later by regulation.

**Standing of complainant:** One significant difference between the proposed legislation and the existing scheme is that any member of the public may now file a complaint regarding police conduct, not just someone directly affected. The OACP asks, "What will happen if a genuine complainant is later identified and comes forward in the course of the investigation? Would this person who initiated the complaint then remain as a full party to the complaint and any entailed proceedings, or will the real complainant then assume that role?" This is not explicitly spelled out in the legislation.

**Not of a serious nature:** The words "not of a serious nature" continue to be used in the new legislation to delineate formal from informal procedural options for resolution. We have found this to be an issue with many complainants. The perception on the part of the complainant when the conduct is found to be "not of a serious nature" is that we are minimizing or diminishing the significance of the behaviour. It makes communication difficult. We would recommend a revision of those words to "conduct that may appropriately be dealt with other than through a formal hearing," or words to that effect.

**Suspension with pay:** Subsection 89(5) prohibits a suspended police officer from exercising his or her powers and authority vested in him or her. It is not obvious to us that this would have the same legal effect as declaring the power and authority of a police officer under these circumstances suspended, rather than simply saying they are enjoined from exercising these for the time being. The language of this section should be made clearer.

**Administrative response to unsatisfactory work performance** continues to be problematic under the proposed legislation. Subsections 89(1) and (2) continue to restrict suspension with pay to suspicion of misconduct under section 80 but not suspicion of unsatisfactory work performance. This is an anomaly, and suspension should be available for gross incompetence as well as for malfeasance. This is repeating a mistake made in the last overhaul in 1997. It should be fixed if we ever hope to effectively use the concept of unsatisfactory work performance.

**Internal complaints:** The bill separates completely the processes for public versus internal complaints, leaving oversight of the latter with the renamed Ontario Civilian Commission on Police Services under the Ministry of Community Safety and Correctional Services. In replicating features of the present process, a mandatory attempt at informal resolution was left in place in the internal complaints process prior to moving to disposition without a hearing, subsection 76(10). This really makes no sense in the context of a strictly internal process without a public complainant. A chief should have the authority in any case to deem informal resolution to be inappropriate based on his or her knowledge of the situation and to move directly to disposition without a hearing.

#### 1440

**Appeal decisions:** Pursuant to clause 87(8)(d), the Ontario Civilian Police Commission would be given the power, on appeal, to order a new hearing before the chief rather than confirm, vary, revoke or substitute their decision for the decision below, which are the present options. For municipal-regional police services, the cost of a repeat administrative hearing complete with court reporter on a conduct issue would be significant, and to this point we have managed without it.

In conclusion, the OACP again wishes to express its appreciation to Justice LeSage, Minister Bryant and members of this committee for extending to us the opportunity to have input on significant legislation that impacts a core aspect of our daily function as police leaders.

We have listed a number of other technical issues and anomalies that we have identified in the attached appendix. Subject to any questions from the committee members, we leave our comments with you and trust they will be of assistance to you in your important deliberations.

**The Chair:** Thank you for your presentation. We have about nine minutes left, and we start with the Liberal Party for questions.

**Mr. Crozier:** Thank you, Chief, for your presentation. It's good to have you with us today—and, through you, thanks to the OACP.

There has been some difference of opinion when it comes to the question of independence and therefore the need that some see to have the Ombudsman involved in this complaints process. In fact, the Ombudsman was referred to in a recent article in the *Toronto Sun*. It's mentioned that Marin wants oversight of the office, which he claims falls under his jurisdiction, and is quoted as saying, "You"—I guess it would be the government—"are creating this new commission that falls under my jurisdiction, but you are removing oversight by the Ombudsman with this nasty section."

I would differ with him in that it doesn't come under his jurisdiction, because the act explicitly says it doesn't. Secondly, it's not without precedent, in that the Ombudsman doesn't have authority—it says in their own material—when it comes to hospitals, long-term-care facilities, children's aid societies, universities, school boards and municipalities. So here is our difference of opinion. Some say the Ombudsman should be involved; some say not. Any comment to that?

**Mr. Mercier:** I can appreciate the comments, the opinion of the Ombudsman. Policing affects every citizen of this province and every aspect of our society. This is what makes your challenge very difficult. What's happened in the past, in changing the style of legislation, is that everybody wants a piece of it but nobody wants responsibility over it. To make it blunt, there are too many cooks in the kitchen and it fails, and people wonder why. As I indicated, the chiefs of police under the act are specifically mandated to be responsible for conduct within their police services. We challenge anyone who is dissatisfied with that to approach us and we will do the best we can to address those needs. We work very well with

all aspects of our society. To introduce another aspect or another dimension of the public complaints system at this stage of the game, with an introduction of another oversight body of the Ombudsman's office, to me just complicates the issue that you're trying to resolve.

**The Chair:** Thank you. We move to the Progressive Conservative Party.

**Mr. Dunlop:** Thank you, Deputy Mercier, for being here today and for your presentation. I noticed, as I went through the presentation, that you made reference to some changes that should be made and it's also referred to in the appendix. If the government would not adopt recommendations or any amendments to the legislation, can you live with the legislation the way it is directly put towards you now?

**Mr. Mercier:** I think what's going to occur with the legislation is, again, we are changing the public complaints system. As we know, historically, every time we change that system, it becomes very—there are many grey areas within the legislation that make it confusing. It's going to impact the men and women on the front line. I can see it causing difficulties with relation to delays. Officers view that as an area of unfairness. I think, as it evolves, the mechanism of trust will present itself, as it always has in the past. What police service leaders of Ontario have always asked for was proper investigative practices, and this is not found everywhere. Do not try to hire dentists to do surgical work. It's always very complicated.

So I would think we have to proceed very cautiously. The success of this legislation will depend on the individuals involved making this process work out of fairness for everyone: the complainants and the police officers.

**Mr. Runciman:** Deputy Chief, I don't have a list of the complaints. I know it has been compiled for us. I'm just wondering about the Durham experience over the last two years. Have you ever done an analysis—I know there is a breakdown of the dismissed complaints and so on for your area. I just wondered if you have ever done a breakdown. We were told by the Attorney General's staff yesterday that, based on the British experience, they expect, initially at least, a surge in complaints as a result of the passage of this legislation. You talked about officer time, etc. I wonder if you've done any kind of analysis on what that means to your service.

**Mr. Mercier:** We are not afraid whatsoever with the number of complaints or where they come from or from who, as long as they are presented to us in a logical way. Last year in Durham region—I can speak for Durham region—we answered close to 200,000 calls for service, and we had 100 public complaints. Of those complaints in the year 2006, 12 were found to be frivolous and vexatious or in bad faith; 21, after investigation, were found to be unsubstantiated; 43 were resolved; four were past the six-month time period; two were third-party complaints; two were informally resolved. Those were the dispositions of those complaints.

We do have a highly trained and respected professional standards unit. I would think, when you look at all

of the feedback we get from our community in Durham region, we are well respected by our public. Public opinion poll after public opinion poll shows that people in our community feel they have accessibility to our police service. They feel that they are able to communicate openly and honestly, particularly with the police leaders, when they have issues surrounding complaints. I'm trying to comprehend why people feel that they have an issue with lodging complaints. I think our reputation in Durham, which is reflected throughout the province, is of openness and fairness.

**Mr. Runciman:** I think public opinion polls reflect that the public at large are very supportive and have a great deal of confidence in the police services in the province of Ontario.

**Mr. Mercier:** And our data is no different than the data supported by the special investigations unit.

**The Chair:** We'll move on to the NDP. Mr. Kormos?  
1450

**Mr. Kormos:** Thank you kindly. I don't know if you saw the recent—newspapers retain pollsters who do these polls from time to time on, "Who do you trust most?" Never mind police; do you know where politicians ranked? Really, it was cold down in that basement, and dark.

Your first paragraph on page 3, "This may be contrasted with the roles and interests of other stakeholders, including police bargaining agents who, while having a vested policy interest," blah, blah, blah: I don't see this as adding to your submission at all. What are you telling us?

**Mr. Mercier:** I think it's very clear that, under the act, police chiefs have responsibility over this.

**Mr. Kormos:** Yes, but you're saying as compared to what? The Police Association of Ontario or local police associations?

**Mr. Mercier:** They are responsible for the membership and their interests. Basically, we are just highlighting the difference between—

**Mr. Kormos:** So what are you warning us about here?

**Mr. Mercier:** Well, we feel that we're responsible and we have responsibility from a cost factor, from a human resource factor, in managing our service. We're just telling you that the police associations do not have an interest in those operational issues.

**Mr. Kormos:** All right. Therefore?

**Mr. Mercier:** Therefore, we don't believe that they should be there at the front door when complaints are received. We've heard their submissions that they want to be notified and have a time period when public complaints are first received, and we don't really find that that is of any importance or relevance in this service. Officers who have complaints have the freedom to contact their associations, and we find that works.

**Mr. Kormos:** Okay. On page 7, "Not of a serious nature"—because the informal resolution is the same language as exists in the 1997 law. Some people are reading stuff into it, and I wish it were true. Can you illustrate or give us some examples of what informal resolution has meant in terms of your experience, a for-example?

**Mr. Mercier:** The statement itself of “not of a serious nature”—people find it serious.

**Mr. Kormos:** Yes, I hear that, but I’m talking about the informal resolution part.

**Mr. Mercier:** The informal resolution works quite well.

**Mr. Kormos:** Tell us about it.

**Mr. Mercier:** Most of the complaints that we receive are complaints of behaviour, interpretation of officers’ actions.

**Mr. Kormos:** Okay. A police officer calls me a “shift-less, useless politician who should be ashamed of himself for taking taxpayers’ money.” I complain about that.

**Mr. Mercier:** Absolutely. So you come in and we sit with you, and one of the pieces would be, “What are you looking for from this officer?” In most cases, the complainant is looking for an apology. A lot of times, they’re looking for the officer to understand their complaint and what their point of view is.

**Mr. Kormos:** And you conduct this session?

**Mr. Mercier:** Yes.

**Mr. Kormos:** And what’s the outcome, in your experience?

**Mr. Mercier:** I find in the majority of cases the officers will fully understand the point of view. It will be explained that, “This complaint has come in about your action.” There’s always a difference in opinion on what transpired, but you core it down to the main issue of understanding the other person’s point of view. To me, the whole concept of the resolution is to form a respect for one another’s point of view in understanding where they are coming from, and, if your behaviour was not appropriate, that you understand that and you adjust your behaviour. That usually is very satisfying to the complainant. Most of them do not want officers to be charged under the police act; they just want that behaviour to cease.

**Mr. Kormos:** I appreciate that.

**The Chair:** Thank you for appearing before the committee today.

**Mr. Crozier:** Chair, just to correct the record, I wasn’t trying to give the deputy chief a promotion, although he might deserve one, when I called him “Chief.”

**Mr. Mercier:** Thank you very much, sir.

#### JO-ELLEN WORDEN

**The Chair:** Our next deputation is Jo-Ellen Worden.

I think you know that we are generally following a rule of 20 minutes for your presentation. Take your time, and afterwards, the three parties can ask you questions. If you need water, there’s water right there too.

**Ms. Jo-Ellen Worden:** Thank you very much. Ladies and gentlemen of the standing committee on justice policy, honourable ministers, members of the opposition, third party members and other honoured guests and speakers, firstly, I wish to acknowledge Justice LeSage for his efforts in conducting inquiries into our province’s current Police Services Act.

Secondly, I wish to thank the Honourable Michael Bryant, the Attorney General of Ontario, for his attention to a surmountable obstacle the people of our province have been facing for some time; namely, the inadequacy of the current Police Services Act in addressing various pressing needs of the citizens and adherents in the province of Ontario.

It is my understanding that it is the Police Services Act that governs the duties, expectations and code of conduct for those individuals who interact with some of the most marginalized and vulnerable populations of our province, i.e., law enforcement personnel.

I am going to speak to an issue I have found that many officers and civilians in the province of Ontario reluctantly acknowledge not only exists but apologetically, and anonymously of course, admit is widespread in our nation. Unfortunately, despite our surreptitious awareness of this crisis as not only a frightening reality for many spouses and children of police officers who daily suffer in silence, fear and shame, this crisis is also an ugly scar on the reputations of the thousands of members of our police services in this great country who endeavour to conduct themselves with the utmost of integrity, honour and courage in both their professional and personal lives. It is a crisis in this nation that no one seems able to effectively resolve and even fewer have the courage to publicly confront.

Members of the standing committee on justice policy, I believe that you can demonstrate your firm commitment to eradicating this crisis by mustering up the courage for the sake of the province to formally and publicly address this plague at its core and ensure its abolition. This terrifying epidemic that is infecting our municipalities, provinces and nation is that of police-perpetrated domestic violence.

For those of you members who may not be familiar with this term, it is a syndrome referred to in a document sent to me by the Ministry of the Attorney General’s office to describe domestic violence that occurs at the hands of men and women who have been trained in the tactical manoeuvres of intimidation, interrogation, manipulation, deception, power and control. It is the term used to describe the workplace harassment and the domestic violence that occurs at the hands of the very officers bound by oath to serve, protect and uphold the law.

Members of the standing committee on justice policy, although Bill 103 goes a long way in attempting to address many of the inadequacies of the current Police Services Act by establishing an independent police review director and creating a new public complaints process, it does nothing to either acknowledge or publicly address the harassment, discrimination, exclusion, humiliation and gender-based violence numerous female police officers are forced to endure on a daily basis at the hands of their colleagues.

Furthermore, Bill 103, on its surface, appears to do tragically less for the thousands of spouses, ex-spouses and child members of an incestuous subculture who are

attempting to escape the police-perpetrated domestic violence with their physical and emotional well-being intact.

As distasteful as this subject matter is for politicians to acknowledge, for those who daily experience the violence, it is far worse to endure. May I respectfully suggest a modification to Bill 103 that specifically identifies and addresses the issue of police-perpetrated domestic violence as an existing and previously ineffectively addressed reality in our province.

Members of the standing committee on justice policy, there must be a legislated mechanism in place to expose and deal with this issue as 100% intolerable in our province and nation. This hushed known reality is a complete violation of our citizens' trust, our citizens' safety, the Police Services Act, the Ontario Human Rights Code, the Criminal Code of Canada as well as victims' constitutional right to equal protection under the law.

I beseech this committee to understand that for any proposed amendments to the Police Services Act, part V, to be maximized in their effectiveness, they must include a mechanism for addressing specific complaints related to allegations of police-perpetrated domestic violence as an entity unto itself. These changes must be a legislated amendment of the Police Services Act and incorporated directly as a modification or addition to Bill 103's substitution of the repealed Police Services Act, part V, not merely understood as being included as a part of some regulatory requirement, policy or procedure.

#### 1500

I am going to cite an example of an ineffective regulatory requirement that indeed addresses the expected police response to domestic violence but does not include adequate provision for the victims of domestic violence that occurs at the hands of law enforcement personnel. My example is the legislated/regulatory requirements of the adequacy standards regulation. In a 12-page document entitled LE-024, contained in the policing standards manual, 2000 edition, required by the Solicitor General, these regulations or guidelines do not adequately:

- recognize that law enforcement personnel and their families are members of a subculture with its own family dynamics, different from other traditional family units;

- label police-perpetrated domestic violence as an entity unto itself that is different from the domestic violence that occurs at the hands of non-law-enforcement personnel;

- address police-perpetrated domestic violence as a syndrome of both active and passive behaviours, including the often cascading residual effects of repeated victimization at the hands of police officers and the current resolution protocol;

- declare that this type of abuse often includes a number of actions perpetrated by police officers that may appear insignificant, trivial or even petty when viewed in isolation, but that collectively often form a carefully premeditated, tactically executed series of events that amount to continuous revictimization and abuse.

To quote the document, "Section 29 of the adequacy standards regulation requires a police services board to

have a policy on investigations into domestic violence occurrences. In addition, section 12(1)(d) requires the chief of police to develop and maintain procedures on and processes for undertaking and managing investigations into domestic violence occurrences."

However, in the document, LE-024, as incorporated into the professional standards manual, there is a mere one sentence that vaguely gives reference to allegations of domestic violence that involve police officers. I recognize that in the 21st century we don't like using labels for just about anything. However, if there is not a legislated acknowledgment of this epidemic, I guarantee that there will be victims of police-perpetrated domestic violence who have been sentenced to a lifetime of abuse and revictimization by these officers and the existing complaints process.

The primary piece of this puzzle is for the government to acknowledge, prior to the upcoming election, that police-perpetrated domestic violence not only exists in Ontario but is even facilitated by some colleagues of the abusers and by the justice system itself. Victims of this type of abuse often suffer in fear for their own lives and their children's safety. They often suffer in complete, paralyzing silence and isolation. This government needs to recognize that under the current legislation, and even with the proposed amendments outlined in Bill 103, attempts by victims of police-perpetrated domestic violence to file a complaint often fall on furious and profoundly deaf ears.

Police-perpetrated domestic violence needs to be identified in the Police Services Act. Moreover, officers need to be firmly cautioned that any behaviours that can be seen as either aggressive or passive attempts to abuse members or former members of their families will automatically be investigated by a team of individuals who have expertise in the area of repeated tactical victimization.

Victims need assurances in their province's legislation that police forces will not be permitted to slough these matters off as family court disputes or custody and access issues. Furthermore, police services in our province must be put on notice and mandated to be forbidden to attempt to influence or coerce victims of police-perpetrated domestic violence to informally resolve their issues without an official investigation.

I suggest modifications to the portions of Bill 103 related to part V of the current Police Services Act to specifically address the complaints of police-perpetrated domestic violence as follows:

- (1) Complaints of police-perpetrated domestic violence are an entity unto themselves and need to be addressed in a classification separate from traditional complaints about officers' conduct, services sought or received.

- (2) Victims ought to have appointed, by the director, a point person representing their best interests and the best interests of their families who has the responsibility to keep them apprised of the investigation.

- (3) There needs to be a zero-tolerance policy of domestic violence involving police officers, and when a

complaint is made involving an officer, there must be the immediate relinquishing of all service weapons, including guns, batons, pepper spray and handcuffs, until such time as the director is satisfied that the allegations have been appropriately addressed as either substantiated or false.

(4) The director must also bear in mind that unsubstantiated allegations of police-perpetrated domestic violence do not inherently mean they were false or vexatiously made allegations.

(5) There ought to be a mechanism in place, legislated into Bill 103, that specifically acknowledges complaints of police-perpetrated domestic violence as automatically referable to two separate professional standards criminal investigation bureaus. I suggest that the first involve the independent police review director and its commission, and that the second separate, parallel investigation must involve the special investigations unit of the Ontario Provincial Police or the equivalent unit of the Royal Canadian Mounted Police. Further, these investigations must be conducted independent of the involved forces' own professional standards investigation in allegations of police-perpetrated domestic violence.

(6) In addition, there needs to be the legislated establishment of a specialized unit under the direction of the independent police review director that has specialized training in the investigation of the tactics and effects of police-perpetrated domestic violence as outlined in the Wetendorf handbook, provided to members of the standing committee on justice policy. This specialized unit under the director must be established within six months of Bill 103's approval and royal assent.

(7) This portion of the bill needs to include the legislated implementation process of local programs in all jurisdictions of the province that specifically address complaints of police-perpetrated domestic violence. I have provided a handbook for the standing committee on justice policy that describes the development, implementation and administration of programs to address domestic violence involving law enforcement personnel. This handbook was created as a result of numerous tragic events. Most noteworthy to families of officers sworn to uphold the law is the case of the murder of Crystal Brame, victim of police-perpetrated domestic violence and wife of the Tacoma, Washington, chief of police.

(8) As this is legislated as a prophylactic measure in addressing complaints of police-perpetrated domestic violence, I suggest that all supporting family members—of age, of course—of police officers should be respectfully approached by perhaps the chaplain of the involved family member's force and given a written copy of their force's policy, procedure and important contact numbers pertaining to domestic violence involving police officers.

(9) Also, there needs to be incorporated into this bill legislated accountability requirements for police service boards to protect the families or former family members of the officers they trained in the tactical combat manoeuvres found in many cases of police-perpetrated domestic violence.

(10) Included in Bill 103, the director should be mandated to enforce a fixed fine against officers found guilty of police-perpetrated domestic violence that is in addition or runs consecutive to all criminal court convictions.

Finally, I challenge the honourable members of the standing committee on justice policy with the commission to ensure that there be legislated accountability for the Office of the Independent Police Review Director, to undertake within two years of the creation of this office to spearhead a campaign to see that police-perpetrated domestic violence is identified as an indictable offence under the Criminal Code of Canada.

Modifications to Bill 103 as set out above should prove for some to be an act of mercy towards these officers, who have a yet-unnoticed propensity towards violence, as they are encouraged to examine their own conduct and are reminded of the position of trust and social responsibility to which they've applied. By legislating changes to the Police Services Act in this way, the government will prevent many incidents of police-perpetrated domestic violence before they even occur.

**1510**

Police-perpetrated domestic violence is a carcinogenic violation of the intimate trust of the some of the most vulnerable citizens of our province who desire only to encourage and support our honourable, noble and truly courageous men and women in uniform. Thank you.

**The Chair:** Thank you. We have six minutes left. That's two minutes for each party, and we start with the Progressive Conservatives.

**Mr. Runciman:** Thank you for being here. I know it takes some courage to appear before a committee and, in some ways, without getting too personal about it, giving us your experiences with respect a very significant issue. This is the second time during the course of these deliberations that we've heard these concerns expressed, so I think it's very worthy of the committee's consideration and I thank you for bringing it to our attention.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you kindly. I've had some considerable experience with this phenomenon through my constituency office. It is indisputable that a police officer who is an abuser in a domestic violence context doesn't have, by the very nature of being a police officer, and his or her role in the criminal justice system being what it is, a status at the very least that makes him or her distinguishable in some respects. Abusers are abusers, violent people are violent people, and people who engage in violence upon their family members and partners are people who engage—you understand what I'm saying. Your point is incredibly well made.

Most of the Wetendorf handbook is American-sourced at this point, but there's been an incredible amount of research done on this, well beyond what you've been able to provide us with today, so it's an important issue. I'm not sure that this particular bill is the means by which the special circumstances that the victim of a police officer as a domestic abuser faces—I'm not sure. You've made some proposals, some suggestions. There's legis-

lation here in the province of Ontario—Mr. Runciman will recall it—that gave 24-hour-a-day access to a justice of the peace to protect a partner who is threatened with violence, in terms of getting an immediate restraining order, a next-party restraining order. I remember the committee hearings on it. Legislation unfortunately has never been declared. The absence of that legislation, the absence of the proclamation of that legislation, is in and of itself a matter of serious concern, because what it gave a victim of potential violence or violence—a victim of threat or actual violence—was, pursuant to legislation, entitlement to access a JP, regardless of the day or night, to get an immediate restraining order. Then you unravel the stuff later, but you save lives that way. As I say, that law is on the books. It hasn't been proclaimed. Perhaps it illustrates the lack of real interest even now by Legislatures—I don't say “legislators”—in making the adequate investments to address these sorts of things in a meaningful way. I wish I could say something to you that would give you perhaps more optimism about something happening here and now. I can't do that. Your point is well made. Thank you for participating.

**The Chair:** Thank you, Mr. Kormos. We'll move then to the Liberal Party.

**Mr. Zimmer:** Thank you for your submission. It's very detailed and very lengthy. I'll read it through carefully. Thank you for bringing it to the committee.

**The Chair:** Thank you for appearing before that committee today.

#### REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD

**The Chair:** We'll move then to our next deputation, the Regional Municipality of Peel Police Services Board: Emil Kolb, the chair, and Michael Metcalf, chief. Once again as a reminder, the process is that we have 20 minutes per deputation. Feel free to use up as much of that time to make your presentation. If there's any time left, we'll allow the members of the different parties to ask you questions.

**Mr. Michael Metcalf:** Thank you, Chair.

**Mr. Emil Kolb:** Good afternoon. I'd like to first introduce myself. I'm Emil Kolb, regional chairman of Peel since 1991 and a member of the police services board since 1991. I've been chair of the police services board since 1995 and was just re-elected for the 12th year. I believe that makes a little difference, in that I have been one of the longest-serving board chairs in Ontario, allowing me to bring you a unique perspective to this. I remember the birth and the end of the public complaints commission, I remember the problems with the SIU when it was started, and I believe I have something to offer in this debate.

With me today I have Chief Metcalf, a 37-year-old veteran of our police services and our chief for the past nine years.

You'll be happy to know that I'm not going to read all my comments and remarks, but I have given written

submissions that have been handed to the clerk. You can review the contents of that with a number of observations. However, in the interests of time, I'd like to make three key points and then ask the chief to speak to put my comments into the real world that the chief operates in. Then, at the end, I'd like to make two final recommendations and welcome any questions if we have time left.

As an open comment, the Peel police services board believes in effective civilian oversight. It has always mystified me as to why we've never had civilian oversight of our provincial force and our Canadian force, the RCMP. However, to be effective, civilian oversight must include the issue of resources, it must be targeted to achieve societal and organizational results, and it must place accountability with those in the position to achieve the first two goals. In my view, the legislation does not meet the last objective.

In terms of governance, most important is the relationship between the board and the chief. Witness the fact that you have a board chair and a chief here today. We need to work together, we need to understand the roles, and we have to have clear accountability of the chief to the board.

Bill 103, in clause 56(1)(b), limits the authority of police boards to establish guidelines for dealing with public complaints, and it impacts our relationship with our chief. The chief's accountability is to the board. A board's authority is to establish policies for the chief, and the police services shouldn't be impacted by the bill.

I speak about this important relationship. Linked to it is the fundamental principle that is the cornerstone of policing in Canada: the independence of the chief in operational matters and his or her ability to administer the day-to-day operation of police services.

I have been involved since 1974, as regional councillor, mayor and chair, in establishing police budgets. I've seen them go from \$9 million to \$240 million over that period of time. I've seen police policies being established that monitor the performance of the chief, which allowed the chief to work without us interfering with him.

We strongly believe that the chief of police must have full authority over the internal complaints and disciplinary process. Section 78 of the bill unduly restricts that right. It gives the new complaint body the right to direct the chief as to the manner in which he is dealing with a purely internal matter, and it appears to open up the internal discipline process without any legislative triggers. We believe this is a significant restriction on the chief of police, and it is without precedent. It also forces the chief to potentially relocate any resources without consideration for other matters.

We don't think you meant that outcome, but that's the way we read it, and we need certainty that this will not be allowed to happen.

1520

Other aspects of the bill also impinge on the role of chief as currently set out in the legislation, and these are in our written submission.

My first point: Let the boards do the job with their chief, without unnecessary interference.

My second point: Ensure that chiefs retain their operational independence. This is very important.

My third point is all about money. I was there when the SIU was formed and I remember them struggling when they first started out because they didn't have enough funds to do what the legislation asked them to do. The SIU lost a lot of credibility with the community and also they lost a lot of ground as a result. Today, we have a very good relationship with the SIU because it has the proper mandate and sufficient funds to do its job.

It is vital that the new complaints body be properly funded from the outset to fulfill its mandate. Equally, it cannot meet its mandate if it is seen as a downloading on municipalities. I have in our written submission how this can occur. The last thing you want is Mayor McCallion, one of my mayors, and other politicians calling this a downloading from provincial government. It doesn't help us, it doesn't help you and it doesn't help the community.

I have two final recommendations that I'd like to make at the end. Now I would ask Chief Metcalf to relate some of his experiences and thoughts on the legislation.

**Mr. Metcalf:** Thank you, Mr. Kolb.

I just wanted to take a couple of minutes. I've had my job for about a year now. I always promised the board that we would have a transparent organization. I am truly a firm believer in the fact that people are responsible and accountable for what they do. I've vowed to the board that I will do that, and I think over the last year that I've shown that.

We've made a concerted effort internally to educate our officers in relation to public complaints and offer an analysis and the reason why. We have made some progress. For example, in 2003, we had 219 public complaints. We reduced that to 180 in 2004. In 2005, they went down to 158 and, as of 2006, we had 130. I think that is an improvement. I think people within the region feel comfortable with it because I've told them publicly that I will deal with their complaints. An example I would use is not something we're really proud of, but we've been recently in the paper with several officers who were found drinking in a public place, behind a furniture store. Unfortunately, 24 officers were charged on that. That's not something we really want to be proud of, but every officer who attended that so-called party was charged and that's subsequently before a hearing officer right at the moment.

I guess when I look at the legislation, my main concern is in relation to subsection 61(5) as it refers to referral to an external agency. I think we've been very fair in the region of Peel. We've helped OCCPS on several investigation, but that's when I've had the staff to help them out. We've helped out Halton and several other agencies heading up north. My concern is that the director can basically contact me and redirect my resources. I don't know if that's the spirit of the legislation, but that certainly is my concern. I have a lot of other issues. This is an important issue, but I have a lot of

other issues, and I wouldn't really feel comfortable with somebody else redeploying the resources from the region. Basically, that's my concern.

**Mr. Kolb:** I want to thank the committee for hearing us out today on this legislation. I want to make two final recommendations, but first I want to say that no matter how hard everyone tries, it is unlikely that we'll get it right the first time. I've been around for a long time and I know how difficult that is to do.

Our first recommendation, then, would be that there be an automatic review of the working of the IPRD by the Ontario Legislature no later than five years after it's put into place.

My second recommendation has to do with what isn't in Bill 103. Many groups during the consultation asked for changes to the Police Services Act, including section 47, which speaks to the accommodation; and also requesting the right of a chief to suspend an officer without pay. My perspective is there is more in the Police Services Act that needs to be looked at. Why do I say that? I say that because policing is a big business. The combined budget for the Peel Regional Police and the Toronto Police Services Board—the two largest municipal police services in this province—is over \$1 billion per year. If it's big business, it is also a complex business, even more so since 9/11. Yet, the Police Services Act is 16 years old and has not been reviewed or even been looked at for over a decade.

My second recommendation would be that the provincial government plan a review of the Police Services Act to create a model and a framework for policing that would look at Ontario for the 21st century. I know that that is not your concern today, but for this committee I would say that if you could discuss this with your caucus members and look into the future, it would be very, very helpful for our communities.

Again, I want to thank each and every one of you for giving us the opportunity on behalf of the police services board of Peel and the chief, and I welcome any questions. But I do want to leave you with one thought, and that is: How many oversight bodies do we really need?

**The Chair:** Thank you for that presentation. We have about nine minutes left. So we'll start with the NDP for three minutes or so, and then we'll go around.

**Mr. Kormos:** Clearly, we haven't had enough, or they certainly haven't been adequate. It's entirely inappropriate to speak about the allegations around the Peel police officers who are in the midst of having their allegations dealt with. And no criticism of you, Chief Metcalf, but surely, when an incident like this takes place and when it is discovered, as it appears, by accident, with the possibility that it wasn't a one-of, doesn't that compel some introspection and reflection on the part of the force, its management, the board? However pleased you might be about apprehending police officers who engage in inappropriate or illegal conduct, the real question is, what kind of climate, culture, in what kind of Petri dish does this sort of behaviour grow and survive? That's my concern, I suppose in a very broad context, because Bill

103 doesn't address that either, does it? It doesn't address it at all. It gives an opportunity for complainants to point the finger with respect to a given incidence and then trying to develop the best possible scenario for dealing with it.

So I put this to you—and you're a long-time police officer; you're a long-time board member: It's naive to suspect that if, in a given police service—disregarding your particular scenario of Peel—certain police officers are engaging in certain activity that they get caught doing, they're the only police officers who are engaging in inappropriate behaviour because they are but the ones caught doing it. Because the first level of oversight is the police board, isn't it? That's the first level of civilian oversight. And again, there's a tendency for boards to say, "Oh, well, no. We don't micromanage. It's none of our business. We set policy and budgets, and then it's up to the chief of police to run the show. Don't have civilians coming to the board complaining about the police. There's a process internally." How do you, as a long-time police officer, a competent one, a capable one, a sincere one and now at a top level of management—what have been your thoughts about that sort of thing? How do you deal with it? How do you get reflective about that?

1530

**Mr. Metcalf:** You don't ignore it, Mr. Kormos. I think, first thing, you can't ignore it at all. I don't really agree with you that it's not an example that I should bring here. This was just—

**Mr. Kormos:** No, I said I don't want to speak to it.

**Mr. Metcalf:** Okay. I just brought that as a simple example that I take the actions of my officers, specifically, very seriously, and I'm not going to tolerate this type of behaviour. I think they know now. It might take a while, but they're going to know that I'm serious about this.

**Mr. Kormos:** Isn't there something wrong with the climate in which this even took place?

**Mr. Metcalf:** Well, 37 years—that's a tough question to answer. It's like socialization amongst politicians, I guess; it's like socialization with bankers. It's just the social aspect of being together after work. But there are licensed premises to do that in, as I said in the press.

**Mr. Kormos:** But that's not the issue.

**Mr. Metcalf:** No, it isn't, but the issue is—

**Mr. Kormos:** Mr. Zimmer and I have never shared a drink after our work here at Queen's Park.

**Mr. Metcalf:** And you've never in a parking lot, at a soccer game or a baseball game?

**Mr. Kormos:** No, no; I don't go to soccer games. Mr. Zimmer offered me the flask and I turned it away.

**Mr. Metcalf:** Well, you have to keep it all in perspective—I did ask some reporters who were on to me about that—in relation to the officers' conduct. I said to the reporter, "Have you never had a beer in a parking lot after a baseball game, basketball game or soccer game, whatever it is?" He finally said yes, with a lot of hesitation. But that is not the issue; I agree.

**Mr. Kormos:** Am I shocked and horrified by it? No, because you're right: It's not planting evidence; it's not beating the hell out of suspects. At the end of the day, I'm not outraged by it. I'm asking you about the climate, though, in which that sort of stuff can take place. How can a force or service at its board become sufficiently reflective upon it to build a climate in which people wouldn't think of doing that?

**Mr. Kolb:** I'd like to jump in as the chair of this board. It's a very appropriate question you ask, but I think I was quoted once in the paper and said, "We stand 100% behind our chief." It is true that it happened and it happened in Peel. Are we proud it happened? No, we aren't. But you know what? All these people are human beings, even though they are police officers.

We take great pride in a small thing like that that really didn't have maybe—on the part of them, there may be two or three issues there that should not have happened, but in most of the case, it didn't interfere with anything. So sometimes you have to stand behind your people. We take great pride in writing stories all about this, but what about the good things that a police officer does every day out there on the street? Should I not stand behind them? Of course I should. Should I condemn the union? Of course not.

**The Chair:** Okay. We've gone beyond the three minutes here.

**Mr. Kormos:** We don't need Bill 103 for the good cops, do we?

**The Chair:** Thank you, and don't say I never gave you enough time, Mr. Kormos, because I gave you lots of time.

**Mr. Kormos:** I took the time.

**The Chair:** I know, but I gave it to you and I accommodated you.

**Mr. Kormos:** You're a decent and fair-minded Chair.

**The Chair:** Thank you. I'm going to use that in my campaign literature.

We'll move on, then, to Mr. Zimmer.

**Mr. Kormos:** "Kormos calls Berardinetti decent and fair-minded."

**The Chair:** I like that—front page of my campaign literature.

Go ahead.

**Mr. Zimmer:** In the interests of getting the rest of the people here who want to speak, I'll forgo my time, but we've got to keep an eye on the clock. It's not fair to—

**Mr. Kormos:** But there is no clock in this room.

**The Chair:** All right. We'll move on to the Conservatives.

**Mr. Runciman:** Yes, we are running behind. I want to thank you both, Mr. Chairman and Chief. For a 37-year-old man, we can see how much stress there is in policing.

**Mr. Metcalf:** I only wish.

**Mr. Runciman:** Despite some of the challenges you may be facing now, I have to say that both the police service and the board have been leaders in policing for many, many years and have a great deal to be proud of. Once again, thank you for being here.

**The Chair:** Thank you for your presentation.

## ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS

**The Chair:** We'll move on, then, to our second-last presentation this afternoon, the Ontario Council of Agencies Serving Immigrants.

**Ms. Debbie Douglas:** Justice committee, my name is Debbie Douglas. I'm the executive director of the Ontario Council of Agencies Serving Immigrants. I believe that our brief is being handed out. I am joined by Sri-Guggan Sri-Skanda-Rajah, who is a board member of OCASI, and my policy and research coordinator, Roberto Jovel. Roberto will be doing the presentation.

But before we start I did want to add my voice to Hansard supporting what Jo-Ellen Worden said. I not only felt she was brave, but one of the things that she didn't let you know is that she is the previous wife of a cop who left her for dead at one point and she didn't go away. So I do want to add OCASI's voice to supporting the issues that she raised in terms of how we address, whether it's through Bill 103 or through one of the various services acts, police-perpetrated violence against women. I thought that was the most politically brave thing I've seen in a long time, to have her come here.

I will turn the microphone over to Roberto.

**Mr. Roberto Jovel:** Thank you, Debbie. Good afternoon, everyone. The Ontario Council of Agencies Serving Immigrants would like to thank the standing committee on justice policy for this opportunity to raise our suggestions for improvement on Bill 103.

We welcome the bill's general thrust towards an independent mechanism for police review that is grounded on civilian oversight. We do see the current form of the bill as a significant step in the right direction towards building public trust in the police services in Ontario and offering the public a meaningful and accessible mechanism for complaints and repairation.

That said, OCASI thinks that there is room for solid improvements to the bill. We want to bring your attention back closely to Judge LeSage's report. Some of the recommendations that we are going to raise today mirror somehow Judge LeSage's work and some are our own recommendations.

So I would like to start very briefly by indicating a little bit of what the immigrant and refugee perspective can bring into this discussion. You may have been hearing from other not-for-profit organizations or social justice organizations or other equity-seeking organizations that have participated in this consultation about the issue of systemic barriers that inform the functioning of different governmental institutions. Also, school boards, the media, corporations and different areas of our society and of our institutions show that there are systemic barriers which need to be addressed. In the case of immigrants and refugees, these barriers become visible when individuals interact with the institutions, and thus the differential treatment that may be linked to the migratory status may combine with racism, with gender injustice, with poverty, with religious discrimination, ableism,

illiteracy, discrimination on grounds of sexual orientation or gender identity or expression, and lack of sufficient English-language skills, among other forms of oppression.

By way of quick examples of how this has affected the communities that we work with and that we serve, racial profiling—you may have heard of this a couple of times during the last interventions—has been a problem when it comes to racialized newcomer youth.

### 1540

Islamophobia after September 11, 2001, has also affected communities who have their origins in the Middle East, South Asia and North Africa. So there are concerns about how these systemic issues play towards the communities that we serve, not only within the police. It's not a matter of singling out a particular form of services, but of course within the police services this is also something that needs to be addressed.

Coming to our analysis of the bill and the recommendations for improvement that we want to make, we would just like to remind everyone here that we subscribe to and support the full set of principles that frame Justice LeSage's work as part of his terms of reference. To quote them briefly, there are four:

“—the police are ultimately accountable to civilian authority;

“—the public complaints system must be and must be seen to be fair, effective and transparent;

“—any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and

“—the province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved.”

So there are four aspects or areas on which we would like to focus today, though, as Debbie has already said, we are supportive of the recommendations and the analyses that have been presented earlier today and yesterday, as well by organizations like the Metro Toronto Chinese and Southeast Asian Legal Clinic or the Urban Alliance on Race Relations from earlier today. So we make those recommendations ours too.

But we're going to focus on four particular areas. I'll try to brief so that we can also have an exchange.

The first one has to deal with the fact that Bill 103 says that the independent police review director may start investigations regarding systemic issues. For the population that we work with and the population that we serve, dealing with systemic issues shouldn't be something that is left to the decision of “may.” We do think that this new independent police review director should have it as part of their mandate to actually have a work plan to deal with these issues. There are a number of issues. I already made a list of the kind of forms of operation that may be having a negative effect through police services.

So the recommendations are as follows:

(1) Bill 103 should ensure that expertise on systemic issues is brought to the independent police review

director by making it a requirement that the IPRD, the IPRD staff and the appointed investigators have demonstrated expertise in addressing systemic issues effectively—so in dismantling them too.

(2) Bill 103 should further ensure that operational mechanisms to dismantle systemic barriers are integral to the IPRD's description and functioning.

(3) Bill 103's commitment to tackle systemic issues should inform the work plan of the directorate by requiring that the IPRD plan ahead its investigation endeavours that will be specifically geared towards addressing systemic issues that are relevant for equity-seeking communities.

(4) The IPRD, through his or her yearly reporting procedures, should highlight what has been done to counter systemic barriers and also list the trends in the field of systemic issues that will need to be addressed in the next year.

So that's the first area.

The second area has to do with the consultation with equity-seeking communities that is needed to make this new mechanism work properly. As you know, the report by Judge LeSage recommended the use of several advisory groups in the different regions that would be composed of members of the public and of the police as a key device for the workings of the new mechanism of independent police review. This is, of course, a key element in maximizing public trust and the community's trust of the new mechanism and the way it will work.

Since the knowledge about the various ways in which policing affects members of equity-seeking communities lies within the leadership of the communities themselves, we believe that this advisory group, or advisory groups, should have proper presentation of the knowledge that is out there in the leadership of the communities at stake. So OCASI recommends that Bill 103 should create an advisory group, making sure that it will be a meaningful and effective consultation process which is inclusive of community experts, who, as a result of their combined expertise, can cover systemic issues on grounds of race, culture, gender, sexual orientation, gender diversity, ability, literacy—the whole list of issues of concern.

Further to that, we are recommending that the advisory group be consulted by the IPRD in the context of hiring and appointment processes, in the context of developing the work plan of the IPRD, including the parts of the plan regarding investigation of systemic issues and in the establishment of procedural rules and the design and delivery of public education strategies.

The third aspect in which we want to make a recommendation has to do with dealing with the complaints on grounds of their importance for equity, regardless of who the complainant is. The concern is about subsection 60(4) of the bill, that says that when it comes to complaints regarding policies or services, the IPRD may decide not to deal with the complaints if the complainant was not directly affected by the policy or service in question. So, again, OCASI thinks that regardless of who the complainant is, a policy or service-related problem

brought to the attention of the IPRD may have sufficient merit as to be considered a matter of equity and of public interest. So we are recommending that the current subsection 60(4) be removed from the bill.

The final aspect we want to raise today has to do with the strict independence or the strict arm's-length approach to investigations that are going to be carried out. We believe that no referrals of complaints should be made in a manner that compromises the independence of investigations. Bill 103 gives the IPRD the power to refer complaints to police chiefs for investigation, and while OCASI appreciates that such an aspect of the bill fosters ownership by police forces of the fairness agenda, we consider also that such a transfer of responsibilities is a loss of independence. Under such referrals, the investigation becomes an internal investigation, even if the IPRD requires a police chief to deal with a complaint and carry an investigation according to precise instructions. So this is not a comment, again, on the police forces of Ontario; it is a comment on method and on methodological guarantees of independence.

So OCASI is recommending that all investigations in the context of the IPRD should be carried out by investigators that are external to the police services and no referrals should be made that render investigations an internal police investigation. We'll stop there.

**The Chair:** Thank you. We have about seven minutes, and we'll start with the Liberal Party.

**Mr. Zimmer:** On the issue of how to structure the advisory councils, you told us the kinds of persons or stakeholder groups that should be on the council. Any idea on how to go about choosing the actual persons—who should do the choosing, how should that be done, and so on?

**Ms. Douglas:** Our sense is that, given that one of our key issues is that the director reports to the Legislature, a committee of MPPs be struck, whether or not it's from the justice committee, including other staff within the Attorney General's office, and that it's an open call—very similar to what we did with pulling together Ontarians to look at our political system. We are very serious about this. We believe that if we are going to build trust about police oversight, then from the get-go we have to show that all of our processes are open and transparent. So what we are suggesting is that the committee that gets together be made up of people from Queen's Park and/or other justices who have been involved in this issue. We would expect an all-party committee, for example, to be setting the criteria and those kinds of things, and then we will expect an open call across the province.

**Mr. Zimmer:** That committee that you suggest would issue a call for—

**The Chair:** Excuse me, Mr. Zimmer. Can you just get a bit closer to the microphone?

1550

**Mr. Zimmer:** So that committee would issue a call, if there was an advisory council, say, for some jurisdiction in northwestern Ontario, "Who would like to sit on the

advisory council?" Their names would come in and we'd sort them out.

**Ms. Douglas:** Yes. There would be an all-Ontario call with criteria set so people know that this is what we're looking for: These are the criteria. Equity is an issue. You would list all of the kinds of things that Roberto talked about and then you would vet names.

**Mr. Zimmer:** Thank you.

**The Chair:** We'll move on to the Progressive Conservative Party. Mr. Runciman.

**Mr. Runciman:** Thank you for the time and effort put into this contribution to our hearings. It's very much appreciated. I have to say, I certainly agree with your perspective on reporting to the Legislature. I think that is the appropriate way to deal with this and I think it is the recommendation of Justice LeSage as well.

Following along the lines with respect to the advisory committee, though, the wording that you've incorporated in your submission is rather narrow in terms of the individuals and groups that you feel should be participating. It strikes me as kind of Toronto-centric, as someone who represents small-town and rural Ontario. In fact you're not emphasizing, although you did in your response to Mr. Zimmer talk about representation from across the province, but there's no—

**Ms. Douglas:** Absolutely. Geographical representation is part of that.

**Mr. Runciman:** Certainly there should be regional representation, but I think it should be much broader than what you're suggesting there. That's my view. I see nothing wrong with having someone who's had significant and extensive experience in the policing community being part of that advisory committee as well, because I think it would be helpful in terms of giving that perspective to other participants. Thank you.

**Ms. Douglas:** Absolutely, but I don't think it's policing history in and of itself. I think it's the person who has demonstrated not only a policing history but a sense of how they believe policing should work within a democracy who should be given some sense within that.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you kindly. I appreciate your highlighting of section 57: the power of the director "to review systemic issues." The language of "may" has been raised at least once before by submitters. But it's even more restrictive than that, because when you take a look at it, he "may examine ... issues of a systemic nature that are the subject of, or that give rise to, complaints." So that really ties his or her hands in terms of being proactive, especially when you've got systemic issues that are part of the undercurrent, you see. So victims of it may not even know that they are victims of it, such that they can't complain about it. Yet the director, with his or her powers and the tools available, could be in a position to have suspicion about them to warrant enough inquiry to determine whether or not that suspicion is then substantiated, so that she or he can then move on.

The other part of that, of course, the reason that "may" is critical from the government's point of view, is that if

it said "shall," then funding would become dictated by the needs of the director and his or her staff. When it says "may," the extent to which the director exercises his or her power under this or, quite frankly, any other section—you see, the ability to slough stuff off to local police forces is a way of triaging and a way of getting rid of stuff that the director's office simply can't handle because it's underfunded.

These are the red flags that are raised that frighten me and cause me a great deal of concern about how much civilian oversight there's going to be, because at the end of the day the vast, vast majority of complaints, and increasingly so in an underfunded system, are going to be referred back to the police forces in which those complaints originated.

**Ms. Douglas:** That's an issue on both levels. One of the things we will continue to speak about to our chiefs of police around the province is that they don't recognize the economic implications for their own budgets on this stuff. They have to look at that. Once you refer back, it becomes part of your prioritizing within the police services within whatever geographical area. So it has economic implications, the use of police, and I think they need to look at that outside of the decision-making. But the bigger picture is what you are saying. Yes.

**Mr. Kormos:** Thanks for your contribution today. I appreciate it.

**The Chair:** Thank you for your presentation and for being here today.

**Mr. Sri-Skanda-Rajah:** Before we rise, may I add my voice to Debbie Douglas's recommendation? I'm picking up on Mr. Kormos's indication—

**The Chair:** We've got to be careful with our time here. I'm under pressure.

**Mr. Sri-Skanda-Rajah:** Fifteen seconds—that the Alan presentation referred to a very particular and special area. It appears that the Legislature has passed legislation but not declared it. It will be a tremendous asset to this justice committee if it can pull it together even though it may have been legislated in a previous government's auspices or in a previous session. To retain the credibility of progressive work is to band together and recommend the declaration of that legislation.

**The Chair:** Thank you very much for your time today.

## ABORIGINAL LEGAL SERVICES OF TORONTO

**The Chair:** We'll now move on to our last deputation, Aboriginal Legal Services: Brian Eyolfson, senior staff lawyer.

**Mr. Brian Eyolfson:** Good afternoon, committee members. My name is Brian Eyolfson. I'm a lawyer at Aboriginal Legal Services of Toronto. I thank you for the opportunity to provide submissions and to present today.

I realize I don't have a lot of time, but I thought before I got to some specific provisions in Bill 103 I would like to just say a little bit about Aboriginal Legal Services of

Toronto, the agency I work for, and some of the issues that we deal with in the context of policing.

First of all, ALST is a provincially incorporated non-profit organization established in February 1990 to meet the needs of Canada's largest urban aboriginal population. One of the objectives of ALST is to assist the aboriginal community to exercise control over justice-related issues that affect it, and one of the main issues that ALST has concentrated on over the past 16 years is the manner in which police services are provided to aboriginal peoples, both on and off reserve.

ALST has developed a fair bit of expertise in delivering programs such as its legal aid clinic, its Gladue caseworker program, the aboriginal criminal court worker program, the victims' right program, and the community council diversion program.

In addressing issues of policing and the aboriginal community, ALST was an active member of the Community Coalition Concerned about Civilian Oversight of Police and the Coalition Against Police Violence. ALST also appeared before the Ontario standing committee on administration of justice to address the community's concerns with respect to police oversight in light of Bill 105, the Police Services Amendment Act, 1997. In October 2003, ALST appeared before the police services board's joint working group on race relations to comment on the group's report. ALST is also currently represented on the special investigations unit director's resource committee.

ALST, through its daily contacts with the aboriginal community, has had, and continues to have, clients who report being mistreated by police services. These allegations include such things as being subjected to random stops, and physical and verbal abuse. ALST has assisted numerous clients with filing complaints against the police pursuant to the Police Services Act, and with other sorts of complaints, such as human rights complaints. Recently, ALST was a party at both the evidentiary and the policy portions of the Ipperwash inquiry examining the events surrounding the death of Dudley George, who was shot and killed in 1995 by an Ontario Provincial Police officer.

There are a couple of main systemic themes that we see a lot in our work around policing and the aboriginal community. One is overpolicing, and the other is overvictimization of aboriginal people and underpolicing.

In the Golden case, a case in which ALST intervened, the Supreme Court of Canada recognized that aboriginal people are overrepresented in the criminal justice system, and they are therefore likely to represent a disproportionate number of those who are arrested by police and subjected to personal searches, including strip searches.

1600

The Report of the Aboriginal Justice Inquiry of Manitoba and the Royal Commission on Aboriginal Peoples reports are two reports that identify overpolicing as one source of systemic discrimination against aboriginal people. The Royal Commission on Aboriginal Peoples, in its report entitled *Bridging the Cultural*

Divide, also noted that the aboriginal community experiences the extremes of both overpolicing and underpolicing. "Underpolicing" refers to situations where the police choose not to act or act inadequately where there is evidence that crimes have been committed against aboriginal people.

In light of these findings, ALST has a particular concern regarding the delivery of police services to the aboriginal community and any complaints mechanisms providing for the oversight of police and the delivery of police services. ALST supports the creation of an independent and impartial civilian oversight body. ALST also believes it's important that any complaints system be accountable, accessible, fair and responsive to the aboriginal community in order to be effective and instill confidence.

There are many aspects of Bill 103 that propose a significant improvement over the current police complaints system. Part II.1, of course, creates the appointment of an Independent Police Review Director and the establishment of his or her office, including the creation of regional offices, and also provides significant powers to the director to conduct investigations into public complaints about police conduct. The new part V prescribes that the independent director receives and reviews all complaints and may retain for investigation complaints about police conduct having regard to the nature of the complaint and the public interest. The director may also review issues of a systemic nature in some circumstances. Bill 103 also appears to permit the filing of third-party complaints in some limited circumstances. These are all improvements.

However, there are a number of areas in the proposed legislation which, in ALST's submission, could be improved in order to create a more effective police complaints system and better instill confidence and trust in the public, including the aboriginal community.

The first thing I wanted to address is the issue of accountability. The last presenters addressed this issue as well. There does not appear to be anything in the proposed amendment that would actually assist in ensuring accountability to marginalized communities such as the aboriginal community. ALST submits that the amendments should include provisions creating mandatory advisory groups or committees to the director, such as an aboriginal advisory group. Advisory groups could assist the director in carrying out his or her mandate more effectively by ensuring that the director receives valuable input from communities affected by particular systemic issues relevant to the director's mandate.

By way of example, I've referred in my submissions to section 7 of the Legal Aid Services Act, which explicitly provides that the board of Legal Aid Ontario shall establish advisory committees in particular areas of law and may also establish other advisory committees that it considers appropriate. Also, section 31.5 of Bill 107, the Human Rights Code Amendment Act, 2006, provides that the chief commissioner "may establish such advisory groups as he or she considers appropriate to advise the

commission about the elimination of discriminatory practices that infringe rights under this act.”

The Honourable Justice LeSage recommended in his report on the police complaints system, at page 66, “The government should appoint community and police representatives to an advisory group for each region. The groups would meet with the head of the new body to discuss systemic concerns, but would not direct the new body.”

With respect to the aboriginal community in particular, Justice LeSage stated at page 83 of his report, “I believe that the new body should give special consideration to the needs of aboriginal communities in Ontario.” At page 84, Justice LeSage recommended that the new body “should make special efforts at outreach to the aboriginal communities in Ontario.”

Therefore, ALST recommends that a provision be included in Bill 103 for the establishment of advisory groups, including an aboriginal advisory group, to assist the director in carrying out his or her mandate.

I just wanted, also in terms of accountability, to briefly address the issue of review by the Ombudsman. Bill 103 includes proposed amendments that, in ALST’s view, would detract from the accountability of the new police complaints system. Bill 103 grants significant powers to the director; however, at the same time, section 97 explicitly removes anything done under part V of the proposed legislation from review by Ontario’s Ombudsman. ALST submits that this should be amended to permit the application of the Ombudsman Act.

With respect to police officer resignations, I note that section 90 proposes that no further action shall be taken in respect of a complaint about the conduct of a police officer if the police officer resigns. ALST submits that police officers should not be able to avoid complaints about their conduct by resigning. The provision could also leave a complainant with no access to justice. In addition, there could be systemic issues or aspects to a complaint regarding police conduct which would then not get addressed as a result of this section. So ALST submits that complaints should continue if an officer resigns, irrespective of whether or not the officer is again employed by a police force within five years.

In terms of fairness, I wanted to address the term “the public interest” that’s referred to a couple of times in the proposed legislation. A key section, subsection 61(6), proposes that the director “shall consider the nature of the complaint and the public interest” in deciding whether to refer or retain complaints about the conduct of a police officer. ALST has concerns regarding the manner in which this section, and in particular the reference to “the public interest,” will be interpreted and applied by the director when deciding whether or not to refer or retain complaints. It’s not clear what factors may be considered by the director in determining what is in the public interest.

On this issue, Justice LeSage, in his report, at page 72 recommended that consideration should be given to “the nature of the complaint, the circumstances surrounding

the complaint, the public interest, the size of the police service, the rank of officer and any other relevant factors to determine whether the complaint is to be investigated by the new body” or referred.

ALST is concerned that the interests of its client community may not necessarily be included in interpretations of “the public interest.” ALST also submits that the seriousness of a matter should also be considered as a relevant factor weighing in favour of the complaint being investigated by the director’s office. ALST also submits that complaints that include allegations of discrimination, racism or hate are of a serious nature and should always be retained by the director for investigation.

In addition, the public interest should be considered in light of factors that instill public confidence and trust in the police oversight process, such as accountability, independence, fairness and transparency.

ALST is also concerned that costs may be a factor in decisions about whether to retain or refer a complaint, particularly if the director’s office is not adequately resourced to carry out its mandate. These cost factors could have the potential to erode the proposed legislation’s goal of providing independent investigations.

Also, whether or not a complainant would consent to having his or her complaint referred could be a factor to consider in the decision.

In summary, ALST submits that “the public interest” in subsection 61(6) should be qualified and interpreted in light of factors that would instill public confidence and trust in the police oversight process, such as accountability, independence, fairness and transparency. ALST also submits that complaints including allegations of discrimination, racism or hate are of a serious nature and should always be retained by the director for investigation.

The term “public interest” also arises in another section of the act, paragraph 3 of subsection 60(3). This proposes that the director may simply “decide not to deal with a complaint made by a member of the public if, in his or her opinion ... having regard to all the circumstances, dealing with the complaint is not in the public interest.” Again, there are no factors to guide a determination of what is in the public interest. ALST submits that paragraph 3 of subsection 60(3) is simply too broad, given that other provisions would provide the director with the broad discretion to decide to not deal with a complaint that is “frivolous or vexatious or made in bad faith” or that “could be more appropriately dealt with, in whole or in part, under another act or other law.”

I also wanted to address some issues of accessibility, in particular, third-party complaints. Justice LeSage, in his report, recommended that any person should be permitted to file a complaint, including third parties. Bill 103 appears to permit third-party complaints, but the circumstances in which they can be made appear to be quite limited.

1610

Subsection 60(4) proposes that the “director may decide not to deal with a complaint made by a member of

the public about a policy of or service provided by a police force if the policy or service did not have a direct effect on the complainant.” This section appears to effectively preclude third-party complaints when it concerns the policies of or services provided by a police force.

In addition, subsection 60(5) proposes that the “director may decide not to deal with a complaint made by a member of the public about the conduct of a police officer if the complainant is not one” of a prescribed class of persons. Many of ALST’s clients who are subjected to mistreatment or abuse by police often feel that there’s no point in filing a complaint against the police as they’re not likely to be believed, or they fear for their safety. Many of these clients are disadvantaged and marginalized members of the community who have frequent interaction with police. Nevertheless, ALST submits that being accountable means being accountable to the entire community, including the disadvantaged and marginalized people of Ontario, and it’s important that third-party complaints be accepted.

Also, organizations that work with potential complainants who may not be able to bring forward an individual complaint on their own should be permitted to file third-party complaints on behalf of individuals. Accordingly, terms such as “member of the public” and “person” in subsection 60(5) of Bill 103 should be qualified to make it clear that organizations as well as individuals can file complaints. In addition, organizations that work with disadvantaged and marginalized communities are particularly well-positioned to identify systemic problems in policing, particularly with respect to policies of or services provided by police, so it’s our submission that subsection 60(4) should be amended to permit third-party complaints in relation to police policies and services as well.

I also wanted to address the limitation period in the proposed legislation. Justice LeSage in his report identified the current limitation period as a key concern in the context of a discussion of systemic barriers that impede the filing of complaints. Justice LeSage noted that the current “limitation period simply does not recognize the reality that there are times when it is inappropriate for a potential complainant to file a complaint within six months from the time of the events upon which the complaint is based.”

ALST submits that the six-month limitation period is simply too short. In ALST’s experience, clients are often dealing with criminal matters in relation to the same incident that may give rise to a police complaint, and these criminal matters often proceed quite slowly. Justice LeSage in his report, in recognition of this, recommended that the limitation period for filing complaints remain at six months. However, he also recommended that if a complainant is charged and a complaint relates to the circumstances upon which a complainant is charged, the six-month limitation period should run from the time when the charges are finally disposed of. ALST submits that this recommendation should be adopted. Alter-

natively, ALST submits that a one-year limitation period would be more appropriate, and it would also be in keeping with recent legislative amendments such as subsection 34(1) of Bill 107, the Human Rights Code Amendment Act, 2006, which will extend the time for filing a human rights complaint in Ontario from six months to one year.

Lastly, I’d like to address systemic issues. Section 57 of Bill 103 proposes that the director “may examine and review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public.” ALST submits that addressing issues of a systemic nature is extremely important, as many of the complaints that our clients deal with regarding police conduct and the provision of police services are systemic in nature. ALST submits that section 57 is an important provision in the new legislative scheme. However, we’re concerned that section 57 may be unduly limiting in terms of which systemic issues can be dealt with. It appears from the language of section 57 that the director would be limited to examining and reviewing issues of a systemic nature only if such issues “are the subject of” or “give rise to” complaints made by members of the public, so the ability of the director to examine systemic issues appears to be dependent upon members of the public raising such issues in public complaints.

Individuals who file complaints about police conduct, policies or services may not necessarily recognize and raise systemic issues relevant to their complaints. ALST submits that organizations should be able to raise complaints of a systemic nature directly with the director. As previously submitted, organizations that work with disadvantaged and marginalized communities are particularly well-positioned to identify systemic problems in policing. Particular organizations, such as the SIU, should be able to file systemic complaints, as the SIU gathers information that allows the identification of systemic issues in policing.

**The Chair:** Mr. Eyolfson, you’ve got about one minute left. If you could just wrap up, I’d really appreciate it.

**Mr. Eyolfson:** Okay. Then I’ll just conclude by saying that ALST recommends that section 57 should be amended to clarify that organizations can file complaints of a systemic nature with the director.

**The Chair:** Thank you. That concludes our time.

**Mr. Kormos:** Chair, before you adjourn, I have a matter I want to raise.

**The Chair:** Does it involve Mr. Eyolfson?

**Mr. Kormos:** Well, he’s welcome to stay to hear me raise it.

I’m putting this to the parliamentary assistant: If he could, when we’re doing clause-by-clause tomorrow—because the “not in the public interest” provision again raised red flags for me as well. I would appreciate if you or ministry staff could give us some idea or sense of what’s being contemplated here and whether it’s a negative or a positive. In other words, if somebody complains that they saw an undercover police officer smoking a joint in the course of a drug investigation, would it not be

in the public interest to pursue that as misconduct, notwithstanding—what is it?—section 23 or so of the Criminal Code? Is that what’s intended, or is it “not in the public interest” because it isn’t of sufficient significance? I really don’t know. Surely the drafters contemplated something when they gave the director that power, and I think it’s important for us to understand what’s being contemplated.

**The Chair:** Mr. Zimmer, do you want to address that?

**Mr. Kormos:** No, no, I don’t expect him to address it.

**Mr. Zimmer:** I’ll take the matter under advisement.

**Mr. Kormos:** We’re going to ask when we get to that section. If staff could be ready to give us an answer, we’d appreciate it.

**The Chair:** Thank you. The committee stands adjourned until tomorrow at 10 a.m. in the same room, when we’ll start clause-by-clause.

*The committee adjourned at 1617.*



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## CONTENTS

Wednesday 31 January 2007

<b>Independent Police Review Act, 2007, Bill 103, <i>Mr. Bryant / Loi de 2007</i></b>	
<b>sur l'examen indépendant de la police, projet de loi 103, <i>M. Bryant</i></b> .....	JP-1059
Mr. Keith Howell.....	JP-1059
Community and Legal Aid Services Program, York University .....	JP-1061
Mr. Robert Carson	
African Canadian Legal Clinic.....	JP-1063
Mr. Royland Moriah	
Ms. Marie Chen	
Community Education and Access to Police Complaints Demonstration Project .....	JP-1067
Ms. Susanne Burkhardt	
Mr. R.J. Potomski.....	JP-1070
Ottawa Witness Group.....	JP-1072
Mr. Paul Durber	
Mr. John Baglow	
Urban Alliance on Race Relations.....	JP-1075
Ms. Tam Goossen	
Mr. Audi Dharmalingam	
Mr. Sri-Guggan Sri-Skanda-Rajah	
Psychiatric Patient Advocate Office .....	JP-1078
Mr. David Simpson	
Ms. Lisa Romano	
Ontario Association of Chiefs of Police .....	JP-1082
Mr. Chuck Mercier	
Mr. Bruce Brown	
Mr. Brian Fazackerley	
Ms. Jo-Ellen Worden .....	JP-1085
Regional Municipality of Peel Police Services Board .....	JP-1088
Mr. Emil Kolb	
Mr. Michael Metcalf	
Ontario Council of Agencies Serving Immigrants.....	JP-1091
Ms. Debbie Douglas	
Mr. Roberto Jovel	
Mr. Sri-Guggan Sri-Skanda-Rajah	
Aboriginal Legal Services of Toronto.....	JP-1093
Mr. Brian Eyolfson	



JP-39

JP-39

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Jeudi 1<sup>er</sup> février 2007

**Standing committee on  
justice policy**

Independent Police  
Review Act, 2007

**Comité permanent  
de la justice**

Loi de 2007 sur l'examen  
indépendant de la police

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 1 February 2007

Jeudi 1<sup>er</sup> février 2007*The committee met at 1017 in room 151.*INDEPENDENT POLICE  
REVIEW ACT, 2007LOI DE 2007 SUR L'EXAMEN  
INDÉPENDANT DE LA POLICE

Consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act / Projet de loi 103, Loi visant à créer le poste de directeur indépendant d'examen de la police et à créer une nouvelle procédure de traitement des plaintes du public en modifiant la Loi sur les services policiers.

**The Chair (Mr. Lorenzo Berardinetti):** I call this meeting to order. Good morning and welcome to this meeting of the standing committee on justice policy. Members of the committee, the order of business is clause-by-clause consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act. Members have before them a package of motions that have been received from the office of the clerk. Are there any additional motions a member would like to table now?

Just for everyone's information, I think motion 11a was circulated this morning. Does everyone have a copy of motion 11a? Okay. Thank you.

Mr. Zimmer?

**Mr. David Zimmer (Willowdale):** Yes—  
*Interjection.*

**The Chair:** Excuse me. I forget your name, but you really can't sit there. I'm sorry.

**The Clerk of the Committee (Ms. Anne Stokes):** He can sit behind you but not at the table.

**The Chair:** Unless you want to run for office.

*Interjections.*

**The Chair:** I think Mr. Zimmer had something he was going to—

**Mr. Zimmer:** I've got one for the table.

**The Chair:** An extra motion to table? Okay. Maybe you can just give it to the committee clerk and we'll have it circulated.

**Mr. Peter Kormos:** Chair, while she's doing that, I want to welcome back MPP Vic Dhillon from his world tour. I trust he's overcome his jet lag. I want him to know that there's any number of good charities that accept fre-

quent flyer miles as a contribution. I encourage him, in view of the extensive miles that he's undoubtedly accumulated and in view of the photo ops that's he's undoubtedly participated in, to contemplate donating those frequent flyer miles to any number of good organizations.

**The Chair:** All right. We're going to have to deal with the bill here, but Mr. Dhillon?

**Mr. Vic Dhillon (Brampton West–Mississauga):** I was waiting for this, and I'm glad that both—

*Laughter.*

**Mr. Dhillon:** The laughter should be recorded. When I go to my community and when I go to the business community—how important this trip was for Ontario. I just want to make it known, on record, that both parties are childishly laughing and making fun of this junket, as they call it, and it's about time that we join the rest of the world in discovering India. Everybody's going to India, and I just want it to be known, on record, that both the opposition and the third party find this very amusing. I look forward to defending the trip in the House. Again, I just want it to be known that I'm glad that they think it was very funny, and I will take it back to my community and let them know as well.

**The Chair:** Thank you. All right. We've got to start with the bill.

**Mr. Kormos:** Chair, if I may, Mr. Dhillon doesn't have to take it back to his community. I'd be more than pleased to tell his community myself. Yes, I have no doubt that Canada will be exporting things to India as a result of this trip, any number of call centre jobs, amongst other things. We've noted, as a matter of fact, during the course of events—National Cash Register over Cambridge-Kitchener way, Mr. Runciman, indicated that it was transferring a number of its jobs to India, losing jobs in Ontario, during the McGuinty junket, in fact. So I have no doubt that there'll be exports from Ontario.

**The Chair:** All right, let's stick with the bill. This has got to be done in a forum where we can discuss this.

We're beginning with section 1.

**Mr. Kormos:** On a point of order, Chair—

**The Chair:** Mr. Kormos, on a point of order. This has to do with the bill, right?

**Mr. Kormos:** Well, it's a point of order. I want to thank Tamara Kuzyk, legislative counsel, for a considerable amount of time above and beyond what most people consider a normal work day preparing at least the amendments that I've been proposing. She worked under in-

credible time constraints, and I appreciate it. Any errors in the motions are mine, and not hers, because I had every opportunity to proofread them. But I do appreciate her diligence and hard work.

**Mr. Garfield Dunlop (Simcoe North):** I'd agree with that.

**The Chair:** Thank you, Mr. Dunlop.

We'll begin, then, with section 1. On section 1, are there any comments, questions or amendments?

**Mr. Zimmer:** Government motion 1?

**The Chair:** This is section 1.

**Mr. Dunlop:** The first motion is section 8.

**The Chair:** No, we're going through section 1 first.

**Mr. Dunlop:** Do we have any before this? Are they not in order?

**The Chair:** They are in order.

**Mr. Dunlop:** The first amendment is not in section 8?

**The Clerk of the Committee:** We still have to go through section 1.

**Mr. Dunlop:** I understand that.

**The Chair:** The first amendments start in section 8, but I still have to go through, and this committee has to approve, the various sections of the bill. I'm starting with section 1 of the bill itself.

On section 1, are there any comments, questions or amendments? None? Shall section 1 of the bill carry? All those in favour? Opposed? Carried.

We can do sections 2 to 7 together. Shall sections 2 to 7 of Bill 103 carry? Carried.

We move on to section 8 of the bill now. In regards to section 8, are there any amendments?

*Interjection.*

**The Chair:** The first motion in our package here has to do with section 8.

**Mr. Zimmer:** Just call it by motion—

**The Chair:** Okay, government motion 1.

**Mr. Zimmer:** I move that subsection 26.1(5) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee of the independent police review director under subsection (4)" and substituting "an employee in the office of the independent police review director."

**The Chair:** Any debate?

**Mr. Kormos:** I believe I understand what the purpose of this motion is, if perhaps the parliamentary assistant could simply confirm my presumption that it's a mere technical matter to comply with.

**Mr. Zimmer:** It's a technical amendment, and I'm going to ask legislative counsel to speak to it, if you want.

**The Chair:** Is there a question?

**Mr. Kormos:** I simply wanted Mr. Zimmer to confirm for us my understanding that this is, like several of the subsequent and similar amendments, a mere technical matter that doesn't impact on the substance of the bill.

**Mr. Zimmer:** Yes.

**The Chair:** Okay. So shall government motion number 1 carry? Carried.

Okay. We have government motion number 2.

**Mr. Zimmer:** I move that subsection 26.1(6) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee appointed under subsection (4)" and substituting "an employee in his or her office."

**The Chair:** Any debate?

**Mr. Kormos:** I appreciate the effort to avoid genderized pronouns; in other words, by saying, "him or her." In the same vein, there is literature that talks about how we create hierarchies in terms of the ordering of this, so you'll often see people saying, "her or him." Similarly, in literature you'll often see the reference to "her" as we historically used to refer to "him," treating it as a generic. Why are we not using "its office?" Is that not an acceptable linguistic form? Do you understand what I'm saying? It's not just political correctness. It's simply fair; it's simply reasonable. But at the same time, when we use double pronouns "him and her," the ordering of them—and I can show you the literature if you come to my office—has implications in and of itself, for instance, in the same historic way as the phrase "father and son." The phrase as we're used to hearing it is "father and son, mother and daughter," but there are power implications in that. So I'm just asking that as a question. This has nothing to do with this specific amendment. It's just an inquiry on my part. If legislative counsel can tell us in terms of what the standards are, I'd appreciate it.

**Ms. Tamara Kuzyk:** I'd be happy to speak to that. I think you're right that there are pros and cons with a number of these different approaches. Just taking one gender over another is not ideal. In "his or her" you deal with order issues. Sometimes it works. We can use "their" sometimes when referring to people, but where the office has landed, and there's no strict policy on this, typically is to use "his or her," but I think it's a debate that's always live in the office and it's something that we're always revisiting. But for the way that we approach drafting now, if we're referring to a single person, it will typically be "his or her" when we're speaking of the possessive.

**Mr. Kormos:** Can I ask, then, why, just for the purpose of making a statement, you don't say "her or his" literally? This isn't an inappropriate question. As you point out, there's a debate going on and I'm somewhat familiar with it.

**Ms. Kuzyk:** Yes. I'm not sure why "his or her" over "her or his"; I think probably just because it's more commonly used that way. We try to make the language we use in the statutes so that it's accessible to what people are used to seeing. But I think it's always an issue that's open to debate.

**Mr. Kormos:** Thank you.

**The Chair:** Any further debate on government motion number 2? Shall the motion carry? Thank you. That motion is carried.

We'll now move on to a PC motion. This is motion number 3.

**Mr. Robert W. Runciman (Leeds–Grenville):** I move that subsection 26.1(8) of the Police Services Act,

as set out in section 8 of the bill, be struck out and the following substituted:

“Annual report

“(8) After the end of each year, the independent police review director shall issue an annual report on the affairs of the office of the independent police review director, and shall,

“(a) lay the report before the assembly if it is in session or, if not, at the next session; and

“(b) make the report available to the public.”

**1030**

This was recommended in the submission by the director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. I believe it was also a recommendation of Justice LeSage when he reviewed police complaints.

This effectively ensures that the annual report of the director is submitted to the Legislature rather than the Attorney General, as is currently the case in the bill. I think that having this report tabled with the assembly will ensure that all members of the Legislature are treated with equal respect and the report is made public and accessible without any potential manipulation of timing for any political purpose by the government of the day.

**The Chair:** Thank you. Any further debate? Mr. Kormos.

**Mr. Kormos:** Mr. Runciman, you're so cynical, but you've been here more than long enough to warrant being cynical. I support the amendment with some caution, and the reason why is this: There was some significant discussion about whether or not it was more appropriate to have the director be an officer of the assembly. If the director were an officer of the assembly, then naturally the report would be tabled with the assembly. Similarly, if the director were an officer of the assembly, the argument that is going to be made later on in the clause-by-clause discussion about Ombudsman oversight would become less relevant because, as an officer of the assembly, it's more difficult to argue that it—the director, she or he—and their office should be subject to oversight by the Ombudsman. Right, Mr. Zimmer? However, the government has been very clear, adamant and persistent in refusing to have the director and his, her or its office (1) responsible to the assembly as compared to being a political appointment, and (2) certainly the government appears adamant around maintaining section 97.

So my concern—and I am going to support this—is that it creates perhaps an illusion of independence that an officer of the assembly would have that isn't real, because at the end of the day this is still a political appointment. That's not to diminish the competence, the skill, the talent and the hard work of whoever is going to be the director. But at the end of the day, yes, everybody out there knows that it's a political appointment and that the master for the director is the government of the day, not the assembly.

**The Chair:** Any further debate? None.

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Dunlop, Kormos, Runciman.

**Nays**

Balkissoon, Dhillon, Oraziotti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

Government motion number 4. Mr. Zimmer.

**Mr. Zimmer:** I move that subsection 26.1(9) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out “any employee or investigator appointed by the independent police review director” and substituting “any employee in the office of the independent police review director, any investigator appointed under subsection 26.5(1).”

This is a technical amendment.

**The Chair:** Any further debate? Shall the motion carry? Carried.

On, then, to government motion number 5. Mr. Zimmer.

**Mr. Zimmer:** I move that subsection 26.1(10) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out “an employee or investigator appointed by the independent police review director” and substituting “an employee in the office of the independent police review director, an investigator appointed under subsection 26.5(1).”

This is a technical amendment.

**The Chair:** Any further debate? Shall the motion carry? Carried.

We'll move on to government motion number 6.

**Mr. Zimmer:** I move that subsections 26.1(11) and (12) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out “an employee or investigator appointed by the independent police review director” wherever it appears and substituting in each case “an employee in the office of the independent police review director, an investigator appointed under subsection 26.5(1).”

This is a technical amendment.

**The Chair:** Any further debate? I'll put the question. Shall the motion carry? The motion is carried.

Government motion number 7.

**Mr. Zimmer:** I move that subsection 26.4(2) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out “an employee appointed under subsection 26.1(4)” and substituting “an employee in the office of the independent police review director.”

This is a technical amendment.

**The Chair:** Any further debate? I will now put the question. Shall the motion carry? Carried.

Government motion number 8.

**Mr. Zimmer:** I move that subsection 26.5(1) of the Police Services Act, as set out in section 8 of the bill, be struck out and the following substituted:

“Investigators

“(1) The independent police review director may appoint as investigators such employees in his or her of-

fice or other persons as he or she considers necessary to carry out investigations under part V or the regulations, and such appointments shall be in writing.”

This is a technical amendment.

**The Chair:** Any further debate?

**Mr. Kormos:** Help a little bit more: 26.1(4) is deleted from the subsection. That’s the effective impact of your amendment. What happened to 26—oh, I see: “an employee appointed under subsection 26.1(4)” in your last amendment, motion 7, has been deleted. You’ve deleted references to employees appointed under 26.1(4), right?

**Mr. Zimmer:** Legislative counsel?

**Ms. Kuzyk:** We’re referring to subsection 26.5(1), that amendment?

**Mr. Kormos:** Yes.

**Ms. Kuzyk:** Yes. It’s just a rewrite so that—it basically gets rid of a somewhat erroneous reference back to subsection 26.1(4) and indicates that it’s employees that we’re talking about, or otherwise.

**Mr. Kormos:** Okay. Thank you kindly.

**The Chair:** Any further debate on this motion? I’ll now put the question. Shall the motion carry? Carried.

That’s the end of section 8, then. Shall section 8, as amended, carry?

**Mr. Kormos:** Whoa, whoa, whoa.

**The Chair:** Any further debate?

**Mr. Kormos:** Yes. I think one of the interesting things here is, if you take a look at the first part of section 8 of the bill, “A person who is a police officer or former police officer shall not be appointed as independent police review director.” That’s fair enough in terms of being an active police officer. That’s understood. But the government here clearly takes the position that it’s not appropriate for a former police officer to be the director.

Nobody has raised that by way of a concern, and indeed that appears to address the concerns that people have, even a witness on Tuesday. What was his name, the former mayor of Toronto?

**Mr. Runciman:** What section?

**Mr. Kormos:** Section 8 of the bill, 26.1(2), and then I’ll be referring, of course, to subsection (5). Who’s the former mayor who was here?

**The Chair:** John Sewell.

**Mr. Kormos:** Yes, okay. It was so long ago, and he was mayor for such a short period of time. He addressed concerns about the police culture, and he appeared to take the position that, for instance, nobody who was a former police officer should even be an investigator, or at least that there should be a sufficient number of those of non-former police officers on the investigative team.

Howard Morton from the law union made an interesting point, remember? Howard Morton’s no right-wing Republican, by any stretch of the imagination. He’s a fair, even-handed, intelligent, capable person. Howard Morton, again to the chagrin of some of the other people present in the room, said that in his experience as SIU director he had former police officers and he found their contribution to be incredibly valuable, their experience as police officers.

1040

So I suppose the question to be put to the government is this: On the one hand, they clearly have not opted for any formula—in other words, dictating the balance that’s necessary. We heard some submitters say, “Assure us that there will at least be a significant number of investigators or employees who are not former police officers so they don’t bring any pro-police bias with them.” The government hasn’t acquiesced to those requests, because it has left it wide open. A former police officer clearly can be—and I’m not arguing that that’s inappropriate. I agree with Morton; I accept Morton’s argument in this regard. But how come it’s okay on the one hand but it’s not okay on the other? I suppose that’s the question.

Again, I’m not disputing—I’m going to support section 8. But why does the government go to lengths on the one hand to say that a former police officer shall not be appointed director but doesn’t go to the same lengths to say that former police officers shall not be employed, obviously, most significantly, in the role of investigator? Isn’t that a strange double standard, Chair? Isn’t that an apparent inconsistency?

Was there a debate, and this was the saw-off; this was the compromise? I’m talking about internally in terms of development of the policy. I just find it peculiar. I don’t know if Mr. Runciman finds it peculiar too. It’s strange.

**Mr. Runciman:** I share the concern. I’d certainly like to hear from the parliamentary assistant about the rationale. I can’t recall if Mr. LeSage recommended this particular position or not, but it is striking. Certainly as Mr. Morton testified before us, and he has significant experience in the area, unlike the people who seem to take the position that police officers should have no involvement whatsoever in virtually every aspect of this—a lot of their views, I think, are based on anecdotal evidence and bias and certainly in many respects don’t stand up to scrutiny. I’m sure that we can find former police officers who are going to be totally objective and extremely well qualified, and I think shutting them out of consideration is very, very inappropriate. I’d certainly like to hear an explanation from the parliamentary assistant.

**Mr. Kormos:** Or is it simply going to be necessary for an applicant who was a former police officer to renounce, like you do your citizenship, to somehow say, “I’m sorry I was a former police officer, and I promise never to recall any of my experiences as a police officer”? Maybe that’s what they’ve got in mind, Mr. Runciman. I don’t know. It’s just peculiar. There’s an imbalance here. There’s an inconsistency.

What we were talking about, Mr. Miller, were the provisions—

**The Chair:** Please address the Chair, Mr. Kormos. Through me.

**Mr. Kormos:** Of course, Chair. I can chew gum and walk at the same time. I do my incompetent best.

**The Chair:** I know, but you should address the Chair.

**Mr. Kormos:** But what we were doing, Chair, Mr. Miller, was pointing out that on the one hand, the government bars a former police officer from being hired as

director, even if he or she maybe was a former police officer during a moment in their youth. "Thirty years ago I lived in small-town Ontario. I was sworn in as a constable. I was a police officer." The government bars them from being a director, but then doesn't bar them from being employees. So what gives? Are former cops okay or are they not okay?

**Mr. Runciman:** It's an important issue, perhaps precedent-setting. Maybe it isn't. But would we say that we would ban someone from a position because they were Catholic or they were white or they were some other—

**Mr. Kormos:** If you were in Belfast, maybe.

**Mr. Runciman:** —or in some other profession? It strikes me as discrimination writ large here. I find it very difficult to understand why we would rule these people out from even consideration. Someone could be the most outstanding individual available to fill this role, and to satisfy someone out there, we're going to ban these people from even submitting an application.

**The Chair:** Any further debate on section 8?

**Mr. Kormos:** Has the government examined whether or not this is indeed Human Rights Code-proof? Believe it or not, I was a former Boy Scout.

*Interjection.*

**Mr. Kormos:** Well, I know. Wolf Cub, the shorts, the whole nine yards.

**Mr. Dunlop:** Can we get a picture?

**Mr. Kormos:** Oh, there are pictures, yes. But please, don't suggest to me that former Boy Scouts should be barred from any particular career. I can't think of another single scenario—can you, Mr. Runciman? Seriously, Chair. When I've seen any standard saying that if at one point you were, short of being a serial murderer, engaged in a particular career, you are barred—I guess lawyers are barred from being on juries. That's not what we're talking about. We're talking about jobs here; we're talking about careers. This is just very peculiar. I'm not saying it's wrong, but be consistent, then. If you really believe that ex-cops shouldn't be directors, then ex-cops shouldn't be employees either, should they? You can't have it both ways. Again, Chair, you're an experienced lawyer.

**The Chair:** Somewhat.

**Mr. Kormos:** Well, you've been in elected office municipally and provincially now for some number of years. What happens when cities try to tell potential staff that you have to live in the city of Toronto before you can get a Toronto job? That doesn't cut it, does it?

**The Chair:** No.

**Mr. Kormos:** It doesn't fly at all.

**The Chair:** They tried it in Detroit, though. It's interesting.

**Mr. Kormos:** But it doesn't fly. I'm not aware of a single—is the government exposing itself to some real litigious potential here? Should we be a party to this? All we need is an explanation; I think this cries out for an explanation. It's just peculiar. I'm not saying it's bad

policy; I'm just saying it's peculiar. I might say it at some point, but it's peculiar. I'll start with peculiar.

**The Chair:** Is there any further debate?

**Mr. Runciman:** Based on the lack of explanation, in my view this is clear discrimination and a smear against anyone who has served in a most honourable profession. I'm going to have to vote against this section. I'm requesting a recorded vote.

**Mr. Kormos:** Well, I'm inviting an explanation from somebody. I'm begging for one; I'm pleading for one. If there's a simple and obvious explanation, it's warranted, because I'm in the same position as Mr. Runciman. In view of the concerns expressed about there being no clear standards for creating balance among the employees, for instance—the government has refused to respond to that. Some have argued we've got to make sure there's a critical mass, if you will, of non-police types amongst the staff. The government won't acquiesce to that, but the government will bar—so it's just a contradiction. If there's a failure to respond, I'm going to have to ask for a 20-minute recess on this vote so that I can make some inquiries on my own, the one that I'm entitled to on this and each and every subsequent vote on each and every amendment.

**Mr. Zimmer:** On a point of order, Mr. Chair: With the greatest respect, I think there's a speaking order and each side has an allotted time.

**The Chair:** They have 20 minutes.

**Mr. Zimmer:** Each party has an allotted time. They speak, it moves to the next speaker, it moves to the next speaker and then the vote is called. But this sort of free-for-all back and forth, we've got to keep some order in the speaking order. Those are the rules.

**The Chair:** Yes, according to the rules, as I understand them and as I'm advised by the clerk, they're allowed up to 20 minutes each at the discretion of the Chair. I can't and I'm not going to cut them off if they want to ask questions. There's no order to it. If you want to make comments, you're welcome to.

**Mr. Zimmer:** As I understand, it's a consecutive 20 minutes and they—

**The Chair:** No, it's not a consecutive 20 minutes; it's not.

**Mr. Kormos:** Please, we very respectfully have asked for a comment. I'm sorry, but this has happened before—getting stonewalled by the government during committees. Remember that, Mr. Runciman?

**Mr. Runciman:** Very well.

**Mr. Kormos:** I, quite frankly, am not going to tolerate it. There will be 20-minute recesses on each and every vote if we're going to play that stonewall game. They've tried that before.

**The Chair:** Thank you. Any further debate? I'll now put the question.

**Mr. Kormos:** I'd like a recorded vote and a 20-minute recess, pursuant to the standing orders.

**The Chair:** All right. We'll recess for 20 minutes. Right now I have 10 minutes to 11. We'll come back at

10 minutes after 11, and then the question will be put with no further debate.

*The committee recessed from 1050 to 1110.*

**The Chair:** The standing committee on justice policy is now back in session.

We now go to a vote. A recorded vote has been requested on section 8, as amended.

#### Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

#### Nays

Kormos, Runciman.

**The Chair:** The section, as amended, carries.

I don't see any motions on section 9. Is there any debate on section 9? None? Shall section 9 carry? Section 9 is carried.

Section 10: The first motion that we'll deal with is government motion number 9.

**Mr. Zimmer:** I move that paragraph 2 of subsection 58(2) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"2. An employee in the office of the independent police review director."

This is a technical amendment.

**The Chair:** Any further debate?

I'll now put the question: Shall the motion carry? The motion is carried.

Let me move to number 10. Mr. Kormos.

**Mr. Kormos:** I move that section 59 of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Duty re complaints

"59(1) The independent police review director shall cause every complaint made to him or her by a member of the public under this part to be investigated in order to determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer.

"Same

"(2) Subject to section 60, the independent police review director shall ensure that every complaint investigated and classified under subsection (1) is dealt with in accordance with section 61."

You will recall, Chair, the submissions made by Alan Borovoy on behalf of the Canadian Civil Liberties Association. Mr. Borovoy provided us with a very comprehensive, capable, competent, insightful analysis; I'm sure you agree.

**The Chair:** We read his textbook in law school.

**Mr. Kormos:** You agree with his competence?

**The Chair:** Well, he did a textbook that we read. It was a good book.

**Mr. Kormos:** In any event, Mr. Borovoy gave us a very thoughtful analysis, as he has done for years here in this Legislative Assembly. I think it serves the people of

Ontario for us to not only accommodate Mr. Borovoy when he's here, but also to heed his cautions. One of the things that he talked about that subsequent participants from the public talked about was the intertwining of policy and conduct.

One of the strange things about the bill—and let's be very clear: The bill does not address the fundamental concern that folks might have about police investigating police. That's a given. In the vast, vast majority of cases, police are going to be conducting investigations. With respect to policy, it's going to be the chief of police who's going to have to respond to a complaint about policy made to the director.

In terms of conduct, the director has three choices, doesn't he? They are, of course, to refer the matter to the chief of the force in which the officer complained about serves for investigation and report back; two, to refer the matter to another police force for the purpose of investigation; and three, and what's interesting—Ms. Kuzyk and I were talking about the hierarchy and ordering of things and the implications of that. It's the third choice of the director to retain the complaint in his or her own office to investigate it.

What do we infer from that? We infer that the director is to go through a process to determine: Is it suitable for the chief of the force from which the conduct complaint arose to investigate it? If not, then is it suitable for another force to investigate it? And finally, then, "Oh, well, I'll guess I'll have to do it"—to wit, the director. It's not unrelated to the amendment, but it takes us into a little bit of a new area.

The other issue, of course, is funding, because a big factor in how the director exercises his discretion in terms of passing the complaint along to the force from which the complaint originated or to another police force as compared to retaining it for him or herself is going to be whether she or he has the resources to accommodate that investigation. Investigations vary in terms of complexity, in terms of the amount of time it takes to deal with an investigation, the amount of staff that have to be devoted to it. The government of the day can tamper and interfere with the director's discretion by simply underfunding it, which means that he or she will have to farm out more and more investigations to police.

Getting back to this amendment itself and the position expressed so very clearly by Mr. Borovoy and subsequently by others: A policy complaint necessarily goes to the local force, to the chief. For a conduct complaint, the director has discretion, although I suggest that there are going to be arguments made that the way in which the legislation is worded is that there's an ordering. Yet conduct and policy are so often intertwined. The example that Mr. Borovoy gave us was a complaint or a concern or a revelation around certain leaders in the black community in Toronto being kept under police surveillance. There was conduct being engaged in—police officers engaging in the surveillance—but there was also an important question about whether or not it was policy.

Oftentimes, conduct that could be misperceived as mere misconduct could flow from actual policy in a

force, so what Mr. Borovoy proposed is that rather than simply making a determination by the manner in which the complaint is articulated—and people are going to be making complaints in all shapes and sizes; you've seen them. You've either seen them in the way people, again, acting for themselves—a Small Claims Court plaintiff's claim. Some are very simple in the way that they're drafted. Kormos, plaintiff, says, "Bob Runciman owes me \$20 and I want him to pay." Others are more complex: It refers to a contract dated such and such a day and "attached hereto is exhibit A" etc.

It's going to be very difficult, I put to you, for the director and her or his staff to look at many complaints and determine on their face whether they're in fact policy or conduct. So Mr. Borovoy very wisely suggests, because this is the first screening process at this intake level, isn't it?—one of the first tasks of the director, other than, I suppose, the issues around timeliness and around frivolous and vexatious etc. The first task is to screen these and put them into two streams: This pile is policy; this pile is conduct. Yet it's not that simple. Mr. Zimmer knows, because he sat through the Bill 107 hearings, most of them—other than when he couldn't be here for a few days—and he understands very well how you can't isolate conduct from policy, how the two are intertwined. Conduct may be in fact a phenomenon of a systemic issue.

So I'm saying, this is an aid. This will be of great assistance to the director. I'm not talking about an investigation, nor was Mr. Borovoy, where you send people out in the field and start applying for search warrants and so on; I'm talking about having to address, in an investigative way and in an investigative manner, complaints to determine whether in fact they're policy, conduct or perhaps a combination of both, in which case the director then has to make a decision about how to deal with, let's say, a hybrid issue.

I am encouraging support for this motion because the government, by supporting this motion, would reveal and demonstrate to everybody watching that it actually listened to the people who took the time to be here, and the government would illustrate and demonstrate to all watching that it has regard for what Mr. Borovoy, the saint of civil liberties in this country, has to say about this legislation—truly, one of the wise men, wise people of the Ontario bar, isn't he?

Thank you.

**The Chair:** You're welcome. Any further debate? None? I'll now put the question.

**Mr. Kormos:** A recorded vote.

**The Chair:** A recorded vote—

**Mr. Kormos:** Chair, a seven-minute recess, pursuant to the standing orders.

**The Chair:** All right. So we take the recess first?

**Mr. Kormos:** Seven minutes.

**The Chair:** My watch says 11:23. Come back at 11:30. Seven minutes, and I'll put the question with no further debate. Thank you.

*The committee recessed from 1123 to 1130.*

**The Chair:** It's now 11:30 and the committee is back in session. Could I please have some order? I shall now put the question on Mr. Kormos's motion, and he's asked for a recorded vote.

**Ayes**

Kormos.

**Nays**

Dunlop, Balkissoon, Oraziotti, Qaadri, Runciman, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to the next motion, which is PC motion 11.

**Mr. Runciman:** I'll have to beg the indulgence of the committee. I'm going to further amend the amendment before you by striking out "and" at the end of clause (a) and by striking out clause (b) and substituting the following:

"(b) whether the complainant is or was subject to criminal proceedings in respect of the events underlying the complaint; and

"(c) whether, having regard to all the circumstances, it is in the public interest for the complaint to be dealt with."

Again, Mr. Chair, this is a recommendation of the Metro Toronto Chinese and Southeast Asian Legal Clinic. The amendment, if adopted, will ensure fair treatment of individuals for a range of reasons—their age, their incapacity. They may not realistically be in a position to file a complaint within the six-month period. This will clearly lay out the director's responsibility to consider a variety of factors.

**The Chair:** Thank you, Mr. Runciman. I don't have a copy of that, though.

**Mr. Runciman:** You don't.

**The Chair:** Is there a copy available for—I don't know if other members of committee have a copy.

**Mr. Runciman:** Sorry about that.

**The Chair:** It's okay.

**Mr. Kormos:** Chair, if I may, Mr. Runciman appears to have amended on the fly or varied the tabled motion, which is fine by me and perfectly legal. Perhaps if he could read it again slowly, we then could just—because it's a minor variation and I'm certainly not going to object to it not having been tabled in written form.

**The Chair:** Is everyone else okay with that, just having him read it slowly?

**Mr. Runciman:** The clerk needs some help. This is really a friendly amendment as a result of discussions between the government representative and myself. We're simply adding in another consideration in addition to my original amendment. If you take a look at my original amendment, it dealt with whether the complainant is a minor and with respect to the meaning of the Accessibility for Ontarians with Disabilities Act, and

whether, having regard to all the circumstances, it's in the public interest for the complaint to be dealt with. What has been added to that is whether the complainant is or was subject to criminal proceedings in respect to the events underlying the complaint. That's the only change. It's an addition. There are no admissions or—

**The Chair:** So (b) now reads—I'm sorry.

**Mr. Runciman:** Clause (b) would now read, "Whether the complainant is or was subject to criminal proceedings in respect of the events underlying the complaint...."

**The Chair:** And (c)?

**Mr. Runciman:** In my original amendment it was (b); it's now (c).

**The Chair:** Exactly the same?

**Mr. Runciman:** Yes.

**The Chair:** Okay. You just inserted (b) and moved—

**Mr. Runciman:** That's right. That's the only change. It's an addition. There's nothing otherwise that's been changed.

**The Chair:** Is there any debate on the motion?

**Mr. Kormos:** I don't oppose the principle being expressed in this. I have a subsequent motion that will be more specific and consistent with the LeSage recommendation—verbatim, if you will—that I intend to still move, even in the event that this is successful.

I have but one question. The phrase "under a disability"—I'm not being critical of anybody, but I'm loath to enact into law phraseology, language, that is not an appropriate, fair, accurate expression of what we intend to say. I'm questioning whether that is how one refers to a person who lives with a disability: "under a disability."

**Mr. Zimmer:** Perhaps legislative counsel could—

**Mr. Kormos:** I don't know.

**Ms. Kuzyk:** To the extent that I'm aware, there's precedent in current legislation for use of that phraseology, I believe. But this was grabbed reasonably quickly.

**Mr. Kormos:** Chair, do you understand what I'm saying? It would be embarrassing for us, wanting to do the right thing, to codify a language or a concept that is unfair. I'm being very generous. If this language exists in contemporary statute, then I relinquish the floor. But I'm just concerned about it. Do you understand why I'm concerned, Ms. Kuzyk?

**Ms. Kuzyk:** I believe I understand your concern, Mr. Kormos. I can't say 100% sure unless I could pop onto e-Laws or something to that extent. But I'm pretty sure that in the rules of civil procedure under the Courts of Justice Act, this phraseology is used, if not elsewhere. But I just can't say 100% off the top of my head.

**Mr. Kormos:** Chair, I'm wondering if we could hold this down. Again, if people don't agree with me, God bless, but it would be a shame to codify something using language that isn't suitable language in the year 2007 when referring to people who live with disabilities.

**The Chair:** Any further debate?

**Mr. Zimmer:** Yes, Chair, in answer to Mr. Kormos's concern, I'm advised that under the Accessibility for Ontarians with Disabilities Act, 2005, this is the definition

of disability: "Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device...."

That clause (a) goes on, with clauses (b), (c), (d) and (e), and is a comprehensive definition of "disability." It is that section that would be used to interpret disability in this—

**Mr. Kormos:** No, I understand that and I don't quarrel with it. The phrase that is irking me a little bit at the moment is "a complainant ... is under a disability...."

1140

**The Chair:** Maybe Mr. Runciman can clarify.

**Mr. Runciman:** It doesn't offend me as the mover because it goes on to say, "within the meaning of the Accessibility for Ontarians with Disabilities Act...." I find it difficult to understand why anyone would be offended by that language.

**Mr. Kormos:** You see, if a person is disabled within the meaning of—

**Mr. Zimmer:** My final thought on this is that having read in the definition of "disability" under the Accessibility for Ontarians with Disabilities Act, 2005, and hearing what Mr. Runciman has said to the point, in my view I'm satisfied that this is not an issue that's likely to cause confusion.

**Mr. Kormos:** Okay, it's not going to cause confusion. Your response is, at the very least, tautological because it says, "within the meaning of the Accessibility for Ontarians with Disabilities Act...." I'm expressing concern about describing a person with disabilities as someone who is "under" a disability. I will not oppose the motion because I support its spirit, but I'm troubled by calling somebody "under" a disability. As somebody who does his best to speak the language, it just strikes me as a peculiar way of putting it. I mean, you're "under" a cloud. You are; you're under a cloud or you're "under" the weather, but usually by noon and a few glasses of water later, you feel fine. I'm not aware of people being identified as living or as being "under" a disability. I'll not press the issue. There you go.

**The Chair:** Any further debate?

**Mr. Zimmer:** Yes, for the reasons articulated by Mr. Runciman, I'm pleased to support this motion.

**The Chair:** Thank you. Mr. Runciman has moved PC motion number 11. All those in favour? Carried.

Then we have motion 11a, which is the NDP motion.

**Mr. Kormos:** I move that section 60 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Same

"(2.1) Despite subsection (1), in the case of a complaint based in whole or in part on circumstances that

resulted in a criminal charge being laid against the complainant, the six-month period does not begin to run until the day after the day on which the charge is finally disposed of.”

This does not conflict with the acceptance of Conservative motion number 11 because Conservative motion number 11 simply sets a number of criteria that shall or have to be considered when you’re talking about an extension of the limitation period. This one makes it very clear—it codifies the fact—that the six-month limitation period does not commence until the finalization of the criminal process. That eliminates discretion. In the section as amended by the Conservative motion, there still remains discretion with guidance in terms of considering. This is, of course, consistent with recommendation 7 of LeSage:

“The limitation period for the filing of complaints should remain at six months running from the time of the events upon which the complaint is based. However, if the complainant was charged and the complaint relates to the circumstances upon which the complainant was charged, the six-month limitation period should run from the time when the charges were finally disposed of.”

I think this again gives comfort to the director. What it also encourages is this: There may or may not be a practice in some parts of the province by some defence lawyers to utilize complaints against police as a bargaining chip—you may or may not be familiar with that—whereby the accused agrees to drop their complaint against the police officer if the assault police charge is reduced to causing a disturbance—I don’t know, that’s just a wild example. This would make it very clear that those are two separate issues, two separate streams. End of story.

**The Chair:** Any other debate on the motion?

**Mr. Kormos:** Recorded vote.

**The Chair:** Recorded vote on NDP motion 11a.

**Mr. Kormos:** Chair, by the way, I’m not requesting any recess.

### Ayes

Dunlop, Kormos, Runciman.

### Nays

Balkissoon, Dhillon, Oraziatti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to PC motion number 12.

**Mr. Dunlop:** Thank you very much, Mr. Chair. I wanted to let you know that the rest of our motions all deal with requests of the Police Association of Ontario. As critic for community safety and correctional services, I work fairly closely with this organization, and I want to thank them for keeping us up to date on this issue throughout the proceedings of Bill 103.

I move that subsection 60(5) of the Police Services Act, as set out in section 10 of the bill, be amended by

striking out the portion before paragraph 1 and substituting the following:

“Not affected by conduct

“(5) The independent police review director shall not deal with a complaint made by a member of the public if the complainant is not one of the following:”

It lists the following, 1 to 4, on page 12 of the bill. It amends Bill 103 to make the police review director’s decision on denying or approving a third party complaint restrictive rather than permissive, as Bill 103 currently reads.

**The Chair:** I’m sorry. So the five sections that you’re talking about are the ones listed in the bill?

**Mr. Dunlop:** They stay in the bill. It’s subsection (5) that is removed.

**The Chair:** Okay, if you don’t mind reading the five sections into the record.

**Mr. Dunlop:** I thought I already had. It’s number 5 in brackets. What’s currently there is:

“(5) The independent police review director may decide not to deal with a complaint made by a member of the public about the conduct of a police officer if the complainant is not one of the following:”

I’m taking that out, and I’m putting in what I just mentioned.

**The Chair:** You just read the motion right now that’s in front of us into the record?

**Mr. Dunlop:** Yes. I said, “I move that subsection 60(5) of the Police Services Act” and I read in:

“(5) The independent police review director shall not deal with a complaint made by a member of the public if the complainant is not one of the following:”

**The Chair:** Okay, and you’re substituting that. I understand. All right. Any debate or questions?

**Mr. Kormos:** I understand the amendment and, reluctantly, I’m disinclined to support it. I appreciate it’s an effort to clarify. I also want to say this: In terms of the concerns about third party complaints, this whole section and subsequent sections that deal with who may make a complaint, a complaint by agency etc.—I’m not as critical of the bill as at least one or two of the presenters were in terms of expressing concerns about bodies being able to make the complaint. Clearly—and it’s my view, and I surely want assistance in this regard if I’m wrong—the bill provides for complaint by way of an agent. Clearly, by virtue of saying “agent,” that means a lawyer, an advocate, a paralegal, a layperson—anybody could prepare the complaint on behalf of the complainant. But at the end of the day, the complainant has to, one way or another, identify themselves with that complaint. I can’t think of circumstances wherein a reasonable complaint couldn’t be made in the existing statutory structure. However, by retaining the discretion, “may,” as compared to “shall” in Mr. Dunlop’s proposition, you’re giving the director the opportunity to deal with a novel, or unusual, unanticipated scenario. I, for the life of me, have no idea what that would be, because the amendment would say, “He shall not, unless the person making the complaint falls into this category.” I couldn’t begin to tell you an

illustration of one where a person won't fall into that category where it would be a reasonable complaint.

1150

Clearly, the director has the responsibility to vet frivolous, vexatious complaints, complaints without substance. For instance, that's one of the concerns, I'm sure, about anonymous complaints. There's a big difference between a complaint against a particular police officer in terms of conduct and a complaint around pay equity. A complaint about a police officer around conduct has significant repercussions for the police officer should the complaint be founded and proceed through to the dispute process here. The evidence that's going to be required in most circumstances is going to be the evidence of somebody who witnessed the conduct that's the subject matter of a complaint, as compared to a pay equity complaint, which is apparent in the books, the records of payroll, of a particular company.

So with respect to the person who made that submission, who made that argument, I think there's a big gap, a big difference. But I think it's important—and again, I don't quarrel with Mr. Dunlop's intent here. I'm sure his interest is in trying to clarify the language to avoid vagueness. However, in this particular instance, I think we would be erring on the side of caution to retain the discretion for the director to consider a complaint even if the complainant didn't fall into one of those four prescribed categories.

**Mr. Runciman:** Opening this door is certainly a major concern of policing organizations. I think most of the public, if they have an opportunity to look at this issue, would also share those concerns that someone theoretically could file a complaint, which could have a very significant impact on an officer and his or her life and family, and the complainer has no connection whatsoever to the event or to the alleged victim or victims of police alleged misbehaviour. I think that that's a very legitimate concern and one that the Progressive Conservative Party feels should be removed from this legislation.

**The Chair:** Thank you. Any other debate?

**Mr. Dunlop:** I'd like to record this.

**The Chair:** Mr. Dunlop has asked for a recorded vote.

#### Ayes

Dunlop, Runciman.

#### Nays

Balkissoon, Dhillon, Oraziatti, Qaadri, Zimmer.

**Mr. Kormos:** I wasn't going to support it. I wasn't going to vote with Liberals.

**The Chair:** The motion does not carry.

In the voting, I'm just getting a bit confused. I'm not meaning to pick on anybody, but the person beside Mr. Zimmer, if you could just step back a little bit or stand

during the voting or just move a little bit back, because it appears that you're another member of the government.

**Mr. Dunlop:** He is.

**Mr. Chair:** I know, but just for my own sake.

**Mr. Kormos:** Chair, please. Mr. Dunlop, that wasn't fair. He's much younger, much brighter, much more competent than any member of the government.

**The Chair:** So then we move on now to NDP motion 13.

**Mr. Kormos:** I move that subsection 66(3) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "he or she shall hold a hearing into the matter" at the end and substituting "he or she shall direct that a hearing into the matter be held."

This, and a number of subsequent amendments, all with similar language, which have been tabled by both the Conservatives and the NDP—and, quite frankly, which could have been moved by either of us in this instance and in several instances following—are in response to the submissions made by the Police Association of Ontario.

**The Chair:** If I could just ask a quick question—

**Mr. Kormos:** I'm sorry. My apologies.

**The Chair:** I don't mean to interrupt. I was wondering if we should stand this motion down, given that there are other motions coming afterwards, or did you want to take it now?

**Mr. Kormos:** What does the Chair think, based on the advice that he has received? Don't ask me; tell me.

**The Chair:** I'm sorry. Are you in the process of—

**Mr. Kormos:** Wrong one?

**The Chair:** No. Go ahead.

**Mr. Kormos:** There may well be other motions down the road where the Chair is going to have to intervene and direct that they be stood down so as to make this process logical; I am prepared to accept your guidance in that regard—

**The Chair:** Go ahead with this motion.

**Mr. Kormos:** —again, because I have regard for the Chair and the process, as you well know.

Once again, this, like a number of subsequent amendments that have been tabled by both the Conservatives and by the New Democratic Party, is in response to the submission made by the Police Association of Ontario; in particular, their argument number two, that deals with independent adjudication. It's also, interestingly, a submission that was made by the civil liberties association.

**Mr. Dunlop:** We're going to be withdrawing the next motion. If this one passes or is turned down, we'll—

**The Chair:** Okay. Between here and motion number 40, they're somewhat intertwined.

**Mr. Kormos:** Agreed, they're intertwined—

**The Chair:** I'm wondering how best to deal with it.

**Mr. Kormos:** I'll tell you what. What happens, you see, is that if we go to motion number 40 and the government uses its majority to defeat that reasonable proposition, we then are denied, effectively, the argument on any number of the amendments that precede amendment number 40—isn't that pretty accurate?—because those

amendments become moot by the defeat of amendment 40. I do not want to have the government silence a vigorous and conscientious opposition.

**The Chair:** Well, then—

**Mr. Kormos:** Then let 'er rip?

**The Chair:** Go ahead.

**Mr. Kormos:** The argument is only going to be made once, because the argument is going to apply to a subsequent series of amendments.

The police association talked about the need for independent adjudication. Alan Borovoy of the Canadian Civil Liberties Association talked about, very clearly, the need for independent adjudication. This is a no-brainer.

You've got two types of hearings here: You've got the internal hearings, the police misconduct hearings, and then you've got hearings that are conducted as a result of a civilian complaint—again, that could deal with police misconduct, almost inevitably. The utilization of the chief of police or an inspector or a superior officer within the same police force as the hearing officer—and we're not talking about tripartite panels here, you understand; we're talking about one hearing officer—quite frankly, clearly and beyond presumably, has its origins in the military model of the police force. A whole lot of things have transpired since the origins of policing based on a military or a quasi-military model: due process; natural justice; the expectation of everybody that an adjudication is going to be conducted by somebody who's neutral and impartial. Police officers have that right when they are the subject matter of a complaint and when their incomes, their careers, their reputations are at stake. Complainants from the community have that right.

1200

Look at the fears that are expressed: From the police officers' point of view, the fear and—do you want me to cite examples of how a police officer who, as a member of a police association that may be a vigorous advocate for police officers and policing, could fear the partiality or lack of neutrality on the part of a superior officer? Take a look at the *Daily Observer* from the Ottawa region, Thursday, January 18, 2007. Discreditable conduct charges: Pembroke Police Chief Blair MacIsaac suspended without pay for three months. One of the incidents that he acknowledged was turning to a constable and when the constable indicated that he was preparing a financial report for the annual meeting of the Pembroke Police Association, the chief of police says, "Well, that's a career-limiting move." The chief then turns to another constable present and says, "Too bad, good young lad on the right path then boom, and so early, eh Dillon."

Three days later, Constable Cotnam—who was preparing the financial material for the police association meeting and to whom the chief of police said, "Well, that's a career-limiting move," referring to Constable Cotnam's activism within his police association—according to this news report, "was at the police station in the dispatch area talking to Sgt. Dickie when Chief MacIsaac approached him. Standing a few inches from Constable Cotnam's face, the chief squeezed the constable's left

bicep and said, 'Career killer. Association man.' He then patted the constable on his shoulder and walked away, shaking his head."

Clearly, the references by the chief to his officers are with respect to their participation in the activities of their police association. You would expect those police officers to feel comfortable being tried, if you will, with the chief of police as an adjudicator, he or she as a judge. You would have confidence in the impartiality or neutrality of a chief of police when there's an inevitable tension—we all understand this—between management, superior officers, and rank-and-file officers. When I say "inevitable tension," I'm talking about, in and of itself, probably a healthy and natural tension, but clearly it's one that does not sustain a perception—never mind a reality—of impartiality or neutrality. It would be like a worker in a unionized shop who had been disciplined by his or her foreman or manager or supervisor and who then launched a grievance process having to have that same foreman or manager as the arbitrator in an arbitration. It would never cut it in terms of the definitions of natural justice and due process.

From the civilian complaints perspective it's interesting, because once again there's the perception of something far less than impartiality or neutrality. The civilian complainant says, "Well, my complaint about a police officer is being addressed, being adjudicated, not by a retired police officer, but by an active police officer in that very same force," who is the hearing officer, who is a senior officer at the level of inspector or higher.

I don't have to remind you of the shocking comments that were made yesterday in this committee room by the deputy chief of Durham, who was sitting right here at this table: the first paragraph on page 3 of his written submission. I'll not forget that paragraph, nor its page nor the location on the page, where the deputy chief of Durham went out of his way to slag, to denigrate, to attack, quite frankly, the bona fides of the police association in general and the police association, I presume, of each and every police service. Now, it's his right to say that. You saw me make an effort to challenge him on it to explain, "Exactly what do you mean, sir?" Because the clear impression was that somehow police associations or their members come before this committee with less commitment to law and order and the public well-being than do chiefs of police. Once again, Chair, this is exactly what people are talking about. The evidence was put before you yesterday, as clearly and transparently as it could ever be put: the very comments that were in the course of the submissions by the deputy chief of the Durham police force.

On the provisions of the bill which call upon the chief or his designate, an officer of a status of inspector or higher, what does Mr. Borovoy say? I'm referring to his submission on page 13: "such an arrangement is bound to generate suspicions of bias. Complainants are likely to believe that police chiefs will favour their own officers when they are in conflict with members of the public. But police officers could also experience suspicion. They

could well believe that intradepartmental rivalries or jealousies are likely to influence these judgments affecting them.”

This isn’t some bizarre machination on the part of Mr. Miller. This isn’t some concoction on his part. Mr. Miller of the police association is not an alchemist. He has told you that police officers have concerns about the independence, about the impartiality, about the neutrality of senior police officers adjudicating complaints against those same police officers. The Police Association of Ontario told you that.

The deputy chief of police of Durham confirmed that. What do they call that, Mr. Zimmer: “corroboration”? People have gone to the gallows for less corroboration than that.

Then Alan Borovoy, whom most people would, again, inappropriately identify as being on the pro-complainant side of police complaints, but who in fact, as a civil libertarian, is concerned about the process, points out that, yes, police officers, along with the civilian complainants, have concerns—not concerns. It’s pointed out that there is a clear absence of neutrality and impartiality when a senior police officer is adjudicating in the course of these complaints.

1210

The Conservatives, Mr. Dunlop and Mr. Runciman, understand that, which is why they put forward the amendments that were identical to the amendments the New Democrats have put forward. The New Democrats understand it. The acceptance of this proposal would probably do more to provide a strong foundation for this new process than anything else in this legislation. It would be the most dramatic step forward in terms of creating an oversight system in which police officers and citizenry have confidence. All of the other trappings, all of the new offices and their accompanying carpeting and upholstery and fancy mahogany desks for the director and his or her staff aside, understanding the concern of the citizenry—and I don’t want to exclude police officers from being the citizenry. When I talk about the citizenry, people understand what I mean about civilians as citizenry, or citizenry as civilians, non-police-officers, making complaints, and police officers as citizens.

This is the crux of the issue, in my view. You talk about wanting to retain remnants of a pre-Maloney—because it was Maloney, wasn’t it, Mr. Zimmer, Arthur Maloney, who conducted the inquiry that created or was the beginning of the Toronto complaints process? I remember I was a student going—because Maloney was one of the greats. He was. And I remember going downtown and watching as a student the inquiry by Maloney into complaints against police, watching the inquiry unfold as a young law student. Of course, out of that grew the Toronto police complaints process that in 1990 became the province-wide civilian oversight, with its significant revision in 1997. I remember that well too.

I would and will and must leave this committee process, when it’s completed, with great sadness and regret if this proposal for independent adjudication is not

adopted by this committee. I’d be willing, if it were a matter of having to trade off, to not move another amendment; if there had to be a trade-off, literally to not move another amendment. If that’s the way it had to be, if the government was holding the gun to my head and told me that they would accept this adjudication only on the condition that that be the final amendment put forward at these committee hearings, I’d have to think long and seriously about it, because that’s how important this particular proposal is.

And when, in the lengthy and often painful and divisive debate around civilian oversight—and it has been divisive. Look, the LeSage report, being what it is, has been a somewhat modest—very capable, very competent. I praised Mr. LeSage and his report from the get-go in terms of the work that was done and the report that came forward. But clearly Mr. LeSage was trying to accommodate a wide range of parties—parties who had either real conflicts in terms of their interests or merely perceived conflicts in their interests. But Mr. LeSage tried to bring them into the one tent, and at the end of the day there are a whole lot of folks who aren’t going to be happy with the legislation. You heard that already at committee. But if there’s one thing we can do, if there’s one, single thing that will leave an impact, it would be to accept the proposal for independent adjudication.

**The Chair:** Any further debate?

**Mr. Zimmer:** You’re quite right. Mr. Justice LeSage recommended that the adjudication be independent. That’s one of the themes of his report. That will be implemented with this legislation in the following way: Standards are going to be set for hearing officers to ensure their impartiality. The goal of such standards will be the promotion of the highest-quality, independent and efficient adjudication on disciplinary matters under the Police Services Act. How are we going to do that? These standards, training and all of those things are best dealt with in regulations, and as those regulations are being worked out, the various stakeholders that have appeared before us to date, including police officers, will no doubt be consulted on those regulations, and we’ll work those regulations through.

Finally, I should just leave you with this thought or reminder: There are always appeals from these decisions of the independent hearing officers. There’s still provision for appeal to the Ontario Civilian Police Commission. That’s how we’re going to ensure both the independence and the very high quality of these independent persons.

**Mr. Kormos:** I appreciate the parliamentary assistant’s comments, and I want the parliamentary assistant to know that I hold him in the highest regard. I know him to be an experienced and competent lawyer. He’s also a person who has served in an adjudicative capacity. He knows what the law is with respect to neutrality and impartiality. He also knows that you don’t legislate neutrality, impartiality or lack of bias; you display it.

An adjudicator performs a judicial function. You don’t create neutrality and impartiality with regulation or even

statute; you do it by ensuring that parties to a dispute—and we're not talking here about complaints about who got to the parking spot first; we're talking about civilians who have grievances and who are making allegations from time to time about incredibly serious behaviour on the part of police officers, behaviour that impacts on our very fabric as a democratic society. We're also talking about processes that, at the end of the day, can deprive a police officer with many years invested in his or her career of their reputation, of their income, of their stature in the police service or of their job. To say that doesn't say that I have a bias towards police, and to say the contrary doesn't say that I have a bias towards complainants. It's the reality.

1220

Mr. Borovoy, in his submission to this committee said this—and I repeat this into the record again in response to Mr. Zimmer's arguments about appeal. Even though the losing party would have a right of appeal to the commission, many complainants in this position could be expected to drop the matter. Their subjection to such a cop-heavy process could well discourage them from seeking the redress that the law makes available. Few aggrieved members of the public would have the fortitude to wait so long for a non-police authority to adjudicate the merits of their complaint.

I hear Mr. Zimmer. I don't doubt his enthusiasm when he responds as he does. I don't even doubt his sincerity. But I suspect full well that he is being less than generous to a very valid argument made by both the police association and by Mr. Borovoy and that, in doing so, the government will have produced a bill which is far less responsive to the needs and interests of Ontarians, police officers and civilians than it could be.

**Mr. Zimmer:** If I may reply to that, you're quite right, Mr. Kormos, I have had some considerable experience with quasi-judicial tribunals over the years. In my experience, the way that you guarantee the independence of those quasi-judicial officers, board members or what have you, is you do four things: First of all, you get good, sound people appointed to those positions doing that work; second, you spend a lot of time training them and teaching them about things like judicial independence, about decision-making and the like; third, you set standards, benchmarks for them to govern themselves; and fourth, you then monitor what they're actually doing. That, coupled with the appeal provisions that are provided for, will, in my view, ensure the independence that we all seek in this function.

**Mr. Kormos:** Mr. Zimmer, none of those four things could have or would have tempered the bias of Chief MacIsaac up Pembroke way. Were it not for his inappropriate conduct, one may never have seen any overt displays of his bias. But that chief of police is the sort of chief of police, in this instance Chief MacIsaac—and they're not all Chief MacIsaacs. I have no doubt that there are chiefs of police out there who don't have the same view as Chief MacIsaac of a police association and

its members. But you're talking about Chief MacIsaac here.

What special training will the chiefs of police receive once this bill becomes law? What special supervision will they receive? Oh, come on. If you were talking about developing a body of adjudicators—because that's really what your four factors speak to, isn't it?—then I am all for it. What a wonderful proposition. So support our amendments from the opposition sides and then, through regulation, develop a body of adjudicators that police can call upon, just like the Ministry of Labour has a body of adjudicators that can be called upon in the resolution of labour grievances.

**Mr. Dunlop:** Mr. Chair, I'm not sure how you're handling the next motion following this, but I just wanted to say in response to Mr. Kormos's comments, that we will be supporting it because, of course, we've got the exact resolution following it as well. I wanted to put that on the record in case we didn't get a chance to speak to our motion that follows this.

**The Chair:** It's exactly identical, is it? We'll deal with it right after.

Any further debate on NDP motion 13?

**Mr. Zimmer:** Mr. Chair, pursuant to the standing orders, could I have a five-minute recess?

**The Chair:** Absolutely.

**Mr. Kormos:** You've got to call the vote first.

**The Chair:** Okay. Shall I put the question? Then you can ask for a five-minute recess.

**Mr. Zimmer:** So you've called the question, Mr. Chair. Could I have a five-minute recess?

**Mr. Kormos:** I'm going to up him by one: six.

**The Chair:** Six. Do we have seven? Six minutes. It's 12:25. We'll come back at 12:30.

*The committee recessed from 1225 to 1230.*

**The Chair:** We'll call the meeting back to order. It's after 12:30 now.

*Interjection.*

**The Chair:** This watch acts up sometimes, but I think it is shortly after 12:30, and we are back here with the standing committee on justice policy. Mr. Kormos, you had the floor with regard to motion 13.

**Mr. Kormos:** You had called a vote. There had been a request for a five-minute recess by Mr. Zimmer. I called his five minutes, raised him one to six, and here we are.

**The Chair:** So now I'll put the question.

**Mr. Kormos:** And a recorded vote, please.

**Ayes**

Dunlop, Kormos, Runciman.

**Nays**

Balkissoon, Dhillon, Oraziatti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

Next is motion 14, but it's an identical motion.

**Mr. Kormos:** Chair, if I may, can we, with the indulgence of everyone, move to motion number 40?

**The Chair:** Do we have unanimous consent? Agreed. So we'll go to motion 40, which is an NDP motion.

**Mr. Kormos:** I move that section 10 of the bill be amended by adding the following section to the Police Services Act:

"Conduct of hearing

"82.1(1) The chief of police shall designate a judge, retired judge or such other person as may be prescribed to conduct a hearing under subsection 66(3), 68(5) or 76(9).

"Same

"(2) A judge, former judge or other person may only be designated under subsection (1) if he or she meets the prescribed qualifications, conditions or requirements."

This flows from the cry and call for an independent adjudicator. The comments I made with respect to the previous amendment all apply to this. This is the root of it, if you will. There are a number of other amendments here that are consequential to this amendment. In other words, if this amendment doesn't pass, those amendments will be moot, of no relevance. This, again, is in response to the cry for an independent adjudicator, one which is unbiased, impartial and neutral. It is in response to the submission of the Police Association of Ontario, because it would apply to adjudicators both for civilian-generated hearings as well as for internal hearings. It is, again, absurd that we would expect a police officer to submit to a hearing process where the adjudicator is management, when there's clearly not an apparent neutrality and impartiality there.

Mr. Borovoy speaks on behalf of civilian complainants and talks about the perception, at the very least, if not the reality, of bias when a police officer, albeit a senior police officer, is adjudicating a complaint by a civilian against a police officer, especially a police officer in that officer's own force. Mr. Borovoy is also cognizant of and gives weight to the argument made by police officers.

I put to you once again that the adoption of this proposal—Conservatives have moved an identical motion. The Conservatives' motion is identical. So both opposition parties speak with one voice on this particular matter; they do. It's a matter of fairness. It's a matter of understanding that the origins of the superior officer conducting the hearing are in no small way connected with the military model that was adopted many, many years ago for police forces, long before the creation of a police association, let me tell you, as a matter of fact, at a point in time when I suspect a police association would have been illegal in terms of police membership in one. This is an idea whose time has come.

I put it to this committee that we would serve our constituents and this province well, were we to do this. This would be the most significant step that could be made in terms of legitimizing any complaints process for both civilian complainants and for police officers and the general public in terms of how they view the process.

This is the most significant step that could be taken. Thank you, Chair.

1240

**Mr. Dunlop:** As Mr. Kormos has already mentioned, the official opposition has an identical motion. It's actually motion number 41. We believe that independent adjudicators will improve both the public and the police officers' confidence and trust in the complaints process, so we will be supporting that. We'll be asking for a recorded vote as well.

**The Chair:** Any further debate?

**Mr. Zimmer:** Yes. I spoke to the substance of this matter when we were debating NDP motion number 13, and I would draw my colleagues' attention to those arguments. They're in Hansard, and I ask that you consider them repeated as if I had repeated them on this motion. Thank you.

**The Chair:** Any further debate? None? A recorded vote on NDP motion 40.

#### Ayes

Dunlop, Kormos, Runciman.

#### Nays

Balkissoon, Dhillon, Oraziatti, Qaadri, Zimmer.

**The Chair:** The motion is not carried.

**Mr. Kormos:** Chair, if I may, the government's defeat of that amendment makes a number of other amendments that have been tabled moot, if you will. I'd be more than pleased if the clerk simply took us through them, and I'll not be moving any of those amendments that have been tabled by me that are now irrelevant by virtue of the defeat of this amendment by the Liberal caucus.

**Mr. Runciman:** Mr. Chair, could the clerk or yourself simply indicate that as we go through this rather than reciting them right now?

**The Chair:** All right. So we'll go back, then, to PC motion number 14.

**Mr. Dunlop:** Do we indicate as we go through?

**The Chair:** Yes.

**Mr. Dunlop:** I move that subsection 66(3) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "he or she shall hold a hearing into the matter" at the end and substituting "he or she shall direct that a hearing into the matter be held."

Again, it's exactly the same as NDP motion 13.

**The Chair:** It would be out of order, then, because we voted on number 13.

**Mr. Kormos:** Motion number 15 is moot.

**The Chair:** Motion 15 is moot. PC motion 16: I think that one is identical.

**Mr. Dunlop:** It's identical to NDP motion 15, so we would consider that moot as well.

**The Chair:** That is moot as well. PC motion 17.

**Mr. Dunlop:** PC motion 16, is it not?

**The Chair:** I'm sorry. Motion 16 is identical.

**Mr. Dunlop:** Motions 16 and 17 are identical.

**The Chair:** No, 15 and 16 are identical.

**Mr. Dunlop:** Okay.

**The Chair:** But we're on number 17.

**Mr. Dunlop:** I move that subsection 66(4) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant consent to the proposed resolution."

Can we speak to that?

**The Chair:** Yes.

**Mr. Dunlop:** Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association. It is widespread practice in employer-employee relationships that the union or association that represents an employee has a role in the discipline process. We support this.

**The Chair:** Thank you, Mr. Dunlop. Further debate?

**Mr. Kormos:** The motion, in and of itself, isn't an unfair proposition, is it, Mr. Zimmer? It does respect and understand the role of the police association, while not a union under the Labour Relations Act, having many of the characteristics of a union.

What the motion does is illustrate the weakness or frailty of the informal resolution provisions. That same language is contained in the 1997 reforms while Mr. Runciman was Solicitor General. I recall those hearings well. There are many, and some of them were parties to these hearings, who would have preferred more specific language about a mediation process. Of course, in a mediation process, the parties—the complainant, the person complained about and a mediator—would be involved in resolving the issue. Unfortunately, Mr. Zimmer, it appears that rather than having the informal resolution, which perhaps could be mediation, as simply part of the process, it's either/or. You opt into the informal resolution, in which case the other process is no longer available to you. I think that's unfortunate from the police officer's point of view as well as from the complainant's point of view. It is not a bad thing to encourage these people, complainant and police officer, to resolve their problem without going through an adjudicative process. You know that's done in the civil courts—mandatory mediation—and it's utilized in a number of other arenas. But if the mediation is unsuccessful, the parties then still have recourse to the adjudicative process. They flow on to the adjudicative process. I think that's the flaw here. Again, it's unfortunate and regrettable, because it's informal resolution—and we heard the deputy chief of Durham explain what that meant. What he talked about was, I suppose, something akin to the chief mediating between the two parties.

Mediation could be suitable for some very serious transgressions or some very serious allegations, because mediation in the case of a very serious allegation could well have as a party the policing authority that has, as

part of its interest, to ensure that the result is not inconsistent with the broader public interest, right? So the government missed an opportunity here; it did. As I say, it's a shame that it creates two streams.

Once the determination and also the acceptance by the parties of the informal resolution, which could include mediation, although the statute doesn't say so and there's nothing to suggest that somebody is going to be paying for the mediators and these sort of things—it appears that once they're there, there's going to be great pressure to acquiesce to resolve within the informal resolution because that's where you've been streamed into. That's not how we use mediation in our court system. We don't say to litigants, "If you mediate, then don't ever come back to the courtroom doorway again." As a matter of fact, one of the ways that mediation is successful is that the parties know they're not going to be forced into something that they don't want, because they know they still have the adjudicative process.

I'm not going to oppose this amendment, but I then point this out to you, because of course a police officer is entitled to consult with his or her association: Who does the complainant, the civilian, consult with? Who do they have on their side? Because what you've done is you appear—I don't know; folks from policy end, help us out here. If people agree to the informal resolution, that's a route that's taken, and there's no suggestion here that they haven't forfeited their right to the adjudicative process. I suppose you could say if they don't resolve, then somehow there's got to be a way of re-entering the adjudicative process, but I don't see where it is in the legislation, gentlemen. I don't see where it is here. And even if there is a way to re-route back into the adjudicative process, there's going to be real pressure on people, once they've agreed to the informal resolution, to resolve it, whether the police associations agree to the process or not. You don't have a re-entry. You don't have a way of getting out of the informal resolution and back into the formal resolution, that I can see, that's readily obvious or readily apparent in the bill.

1250

So as I say, I have no qualms about a police officer consulting his or her association in the course of determining whether or not to go the route of informal resolution, but then where's the corollary? The police officer has got that right anyway. Even without this amendment the police officer has that right. You know that; I'm speaking to the government now. Where in the bill did you create a parallel right for complainants?

If a complainant alleges criminal misconduct and then is perceived to have fabricated it, that's called—what's that called, Mr. Zimmer, in the Criminal Code? It's called public mischief, isn't it? I mentioned the other day that back in the old days, when I was practising law, I remember clients who would complain about police misconduct and the police would sit down with a very lengthy discussion about the maximum prison terms that could be imposed in the event of public mischief. That's pretty persuasive to somebody who may well be a victim

of police misconduct but happens to have a little bit of a rap sheet themselves and is out on bail facing some marijuana trafficking charges down at Park's Billiards at the corner of Park Street and King Street, just two doors down from the Rex Hotel down in south Welland. Drop by some day. There's off-track betting at the Rex. But it's pretty persuasive to a kid who, as I say, has got a rap sheet to be told about the consequences of a public mischief charge and the prospect of doing the two years of jail time or whatever it was at that point in the history of the Criminal Code.

So I'm not going to oppose this, because it's redundant; the police officer already has the right to consult. But, parliamentary assistant, where is the right of the complainant to consult meaningfully before he or she agrees to an informal resolution? What do they do, go to the local legal clinic? Do you suggest that? Do you know what the line up is like outside those legal clinics? It's true. Our staff deal with them all the time. We refer people constantly to the local legal clinic, and then Jack Gillespie, God bless him, who's the director of ours, calls me back and says, "Jesus, Pete, how about more funding? Then we'd be more than pleased to take on this extra case load."

So police already have this right. I'm going to talk more about the informal resolution process later and what I perceive as some lost opportunities in it. The amendment is not offensive but for the fact that there's no corresponding provision for the complainant. Thank you, Chair.

**The Chair:** Mr. Zimmer and then Mr. Runciman.

**Mr. Zimmer:** I'd just say, Mr. Kormos, in response to the points that you've made, I think our government motion 20, in my view, deals with the concerns that you've just put forward. Let's see what happens when we get to 20.

**Mr. Runciman:** I don't disagree with Mr. Kormos in terms of police officers having the right. What this amendment will do is impose an obligation. I think the concern, from my perspective anyway, would centre more on officers who are new to a particular police force and could find themselves in very intimidating circumstances and make a decision that could set a precedent and could not be in their best interests or their colleagues' best interests. I think that imposing this opportunity, if you will, to ensure that they at least have the experienced and reasoned advice of representatives of their association is most appropriate.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I think it's really important to put the question—not call the question; put the question—to policy staff who are here, because I really need some clarification in terms of “a decision being made that is appropriate for informal resolution”—fair enough; “consent by the respective parties”—fair enough; “a police officer can consult with his or her association”—fair enough; and the government in motion 20, the cooling-off period, why it has nothing to do with the right of the complainant to consult with anybody.

**The Chair:** Mr. Kormos, I wonder, do you want to hear from them?

**Mr. Kormos:** Yes. Help us on what happens to a dispute that gets put into the informal resolution process where there is no resolution.

**The Chair:** Could staff come up to the table here and just identify yourself, please?

**Mr. Graham Boswell:** Hi. I'm Graham Boswell from policy division. Our view is that yes, if the informal resolution doesn't work out, it does go back into the adjudicative stream.

**Mr. Kormos:** I hear you. Common sense would dictate that, but can you refer us to—I didn't read anything in the bill that speaks to that. Perhaps there is something in the bill. It would make me happy if there were. Zimmer would be happy too. It would make him a happy person today—happier than he usually is.

**Mr. Boswell:** It may not be explicitly stated. We would note that if the informal resolution does not work or is not successful, it could go to the disposition without a hearing. That's a situation where a chief of police could impose a minor penalty, subject to the consent of the officer. But if there is no agreement in regard to informal resolution prior to that, it would go to a disciplinary hearing.

**Mr. Kormos:** Sure. Okay. I'm not fighting you, gentlemen. I think this is an important sort of thing, because hearing you now, do you mean to say that in the context of the legislation as you understand it, intimate as you are with it, a police officer who agrees to informal resolution could be subjected to a penalty that's imposed as a result of a non-hearing disposition with or without his or her consent?

**Mr. Boswell:** No. If there's no consent, it has to go to a hearing. Under the disposition-without-a-hearing option, if the officer says, “No way; I'm not going to accept this,” you go to the full hearing, the officer has full rights and their full appeal rights there as well.

**Mr. Kormos:** If I may, why? You talked specifically—not you, but drafters—in the amendments to the Family and Children's Services Act, about incorporating mediation in child protection cases, amongst others—basically incorporating the mandatory mediation model into that type of family court litigation. It wasn't a bad thing; it's sort of the vogue at the very least, currently. In view of the fact that informal resolution dates back to at least 1997, why didn't you talk more specifically about mediation options?

1300

**Mr. Boswell:** I think part of the concern is that mediation is a complicated process, and there may be need for variations in the type of mediation that you have across the province. What works in Toronto may not work in Sudbury or North Bay. I think there's some need to ensure that—there could be work with local community groups; there's a possibility of setting up pilot projects and that sort of thing.

I think there could be significant problems if you set out a rigid mediation structure in the statute. There's obviously a lot more flexibility in terms of regulations. We

believe there is the ability to set out an appropriate mediation outside of there.

**Mr. Kormos:** Sure. The category of informal resolution obviously could include a more defined mediation. But then what do you do in the current context of an informal resolution, where a police officer has agreed to it—with or without getting association advice; this amendment doesn't have to pass for that police officer to get association advice—there's an exchange in the resolution process—nobody agrees; you then have a police officer, maybe with genuine good effort, saying things to try to participate in the informal resolution—and the reason I say this is because, insofar as I understand, in a formal mediation, there would be specific agreements about not using any of the information exchanged in the mediation if the matter then proceeds to an adjudicated thing. Of course, the chief or whoever conducts the mediation would never be a hearing officer in a more formal mediation structure and in the sort of mediations you talk about in civil court and now in the family court. How do we deal with that in this context?

**Mr. Boswell:** In terms of disclosure of information in a more formal process?

**Mr. Kormos:** Yes.

**Mr. Boswell:** There is protection about that—I'm just looking for the specific section number. No information disclosed in the course of an informal resolution can be used in a subsequent process, so essentially it's like a settlement privilege.

**Mr. Kormos:** Is it?

**Mr. Boswell:** As I understand it, it is.

**Mr. John Twohig:** If I'm not mistaken—

**The Chair:** Excuse me. Please identify yourself.

**Mr. Twohig:** Sorry. John Twohig is my name. I'm also with the policy division.

Subsection 66(5) provides that the decision to even proceed informally itself must be approved by the IPRD.

**Mr. Kormos:** With the resolution proposed?

**Mr. Twohig:** Even more than that; it's the decision to proceed informally, the way I read it.

**Mr. Kormos:** That's interesting.

Subsection 66(5): "Before resolving the matter informally, the chief of police shall notify the complainant and the police officer, in writing, of his or her opinion that there was misconduct or unsatisfactory work performance that was not of a serious nature, and that the complainant may ... ask the independent police review director to review this decision"—"and that the complainant may"; not the police officer. Wow. So here the chief of police is making a conclusion that there was misconduct, albeit not of a serious nature. There's a finding, not an allegation, of misconduct, and then the complainant may ask the independent police review director to review this decision. What about the cop? Is there a parallel section? I hope so.

**Mr. Boswell:** I don't believe there is, because the purpose of setting up the independent police review director is to deal with public complaints. The police officers have rights of appeal at a later stage and that sort of thing.

I found the specific subsection that I was referring to before. Under the proposed subsection 83(9), "No statement made during an attempt at informal resolution of a complaint under this part is admissible in a civil proceeding, including a proceeding under subsection 66(9), 69(11), 76(11) ... or a hearing under this part, except with the consent of the person who made the statement."

So that does, I would say, essentially provide a settlement privilege. It would allow parties—

**Mr. Kormos:** Okay, but it doesn't protect you from the disclosure function. It takes place all the time, which we all know, right? Good. Where's that subsection again? Help me.

**Mr. Boswell:** It's the proposed 83(9).

**Mr. Kormos:** Good. "Inadmissibility of statements (9) No statement...." Thank you.

**The Chair:** Do you have more questions?

**Mr. Kormos:** Thank you, gentlemen.

**The Chair:** I think Mr. Zimmer has a question.

**Mr. Zimmer:** Just so we have some order to the day: It's five after 1. What are we going to do for lunch?

**The Chair:** I was suggesting we go to a quarter after 1 and come back at either 2:10 or 2:15.

**Mr. Zimmer:** That's fine.

**The Chair:** Is that okay with everybody?

**Mr. Kormos:** I don't know. I look around this room, and other than a couple of the younger members, most of us don't really need lunch, do we?

**The Chair:** Stretch our legs; fresh air.

**Mr. Kormos:** Thank you to the staff. I appreciate the reference to subsection 83(9). That's obviously important. It just seems, to be fair, Mr. Zimmer, that the whole informal resolution stuff is a little underdeveloped. Do you understand what I'm saying, Mr. Runciman? The chief can make a finding of misconduct and then propose informal resolution. The complainant can ask that that be reviewed, I suppose with the point of view of saying that it's not of a less serious nature, but the cop can't make the appeal to say, "How dare you make that finding?" Holy moly, now we're drawn back into the independent adjudicator. So the chief of police is making and drawing conclusions—I don't know, Mr. Zimmer. Maybe Mr. Bryant should sit down with this bill a little bit longer, but I don't think that's on his agenda. He's too busy planning his leadership campaign. I hear him speaking French in the Legislature. I know what's going on.

*Interjections.*

**The Chair:** All right. Any other questions or debate on PC motion 17?

**Mr. Dunlop:** I just want a recorded vote.

**Ayes**

Dunlop, Kormos, Runciman.

**Nays**

Balkissoon, Dhillon, Oraziotti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We have about seven or eight minutes before we break at 1:15. Can we deal with PC motion 18?

**Mr. Runciman:** Why don't we break for lunch before starting on something else?

**The Chair:** Do you want to break for lunch and come back at 2:30? Is that reasonable?

**Mr. Runciman:** At 2:30? At 2:15.

**The Chair:** At 2:15. I'm sorry. It's 2:15. Are we in agreement, then, to come back at 2:15? This committee stands recessed until 2:15.

*The committee recessed from 1308 to 1418.*

**The Chair:** I call the committee back into session.

**Mr. Runciman:** Mr. Chair, I'm asking for unanimous consent to deal with NDP motion 63 as the first order of business.

**The Chair:** Is that unanimous? All right. We'll go, then, to NDP motion 63. Mr. Kormos, did you want to read the motion into the record?

**Mr. Kormos:** I move that section 97 of the Police Services Act, as set out in section 10 of the bill, be struck out.

This is the notorious and controversial section 97 that has been the subject matter of much commentary, debate and indeed dispute since the bill was introduced last year in April. Indeed, promptly after the bill's introduction, in May 2006—specifically May 13—Ontario Ombudsman André Marin, in a keynote address to the Toronto Police Services Board at an event celebrating that board's 50th anniversary, had occasion to welcome the introduction of Bill 103, a sentiment that he echoed when he appeared before this committee two days ago here at Queen's Park. Mr. Marin, our Ombudsman, who is, as we all know, an officer of the assembly and whose selection as a successor to the incredibly highly regarded Clare Lewis was unanimously supported by all three parties in this Legislature—I'm pleased to note that the Liberal enthusiasm for the appointment of Mr. Marin was as strong as that from within the Conservative and Liberal representatives on the tripartite committee that selected Mr. Marin from amongst a number of incredibly capable competitors for the position. I should note that Marin has proven that he's worth every penny he's being paid—in fact, more—with an incredibly courageous performance of his role in the best tradition of ombudsmen.

Ontario should take some pride in that Ontario has very much been a leader internationally in supporting and developing the role of the Ombudsman. An Ombudsman, most if not all of us believe, is critical in a democratic society to make sure that people are served well and as they ought to be by institutions and bodies and structures that exist under the umbrella of the government, a structure, for instance, like the office of the independent police review director that will be created by Bill 103.

As recently as this week, well-known and highly regarded Toronto Sun columnist Christina Blizzard said this about Marin. I'm quoting from her column that appeared in a number of Sun-owned and Sun-associated newspapers. This column was the version of the column as printed in the London Free Press on January 31. Ms.

Blizzard said, "Marin has done an exemplary job since he took over as Ombudsman almost two years ago. He is feisty and fearless and only too happy to tackle heartless bureaucrats and hidebound government processes that move at a glacial pace, often trapping the little guy under their weight."

There has been some effort, in my view, on the part of the government, like the three-card monte operators down on Eighth Avenue in New York City who try to hide the black jack, somehow thinking that with enough razzle dazzle and quick movement of the hands, that they, the government members and the government can confuse people in Ontario about the oversight function of the Ombudsman, especially as it would apply and should apply to the office of the independent police review director. The Ombudsman, in his May 2006 speech to the Toronto Police Services Board, noted the not inappropriate significant powers of the office of the independent police review director as created by Bill 103. He, in the same speech, which has become known as the "quis custodiet ipsos custodes" speech, also talked about the immunities that the director enjoys. Again, he, Mr. Marin, points out not inappropriately. But he also observes that it's because of those significant powers, and because of the concurrent immunities that are enjoyed, or will be enjoyed, by the director, that are afforded him by this statute, that there is a need for independent oversight via the Office of the Ombudsman.

Of course, this office naturally falls under the Ombudsman's jurisdiction. If it didn't, there wouldn't be any need for section 97. That's clear. The independent police review director's office, created by Bill 103, would fall within the jurisdiction of the Office of the Ombudsman in terms of the traditional and legislated role that the Ombudsman performs, but for section 97.

So the government, by inclusion of section 97 in this bill, is very much and very clearly going out of its way, the government's way, to ensure that the Ombudsman, be it Mr. Marin or any number of successors, and there will be successors and there inevitably are—this isn't a one- or two-year proposition. There's no sunset in this bill. This is the next or the newest form of the civilian oversight regime here in Ontario, and history tells us that this will be the prevalent regime for at least 10 years, if not more. In fact, most of the expectations of people who appeared before this committee who gave qualified support for the bill, noting from their perspective its significant efficiencies, also spoke of it as a beginning, one which they hope, anticipate and expect will be built upon.

That confirms yet further for me that this legislation, Bill 103, is going to be the framework for a civilian oversight of police in this province for some significant chunk of time. Even Mr. Runciman, with his incredible longevity here at Queen's Park, is likely to be a very old man before this issue is revisited. At that point, he undoubtedly will have served 40 or 45 years in the provincial Parliament, but I'm confident that he will pursue his duties with the same skill and vigour as he does now.

I have more to say about my amendment. I do, however, want to yield the floor for a period of time to Mr.

Runciman, who is under some special pressures here this afternoon.

**The Chair:** Thank you very much, Mr. Kormos.

**Mr. Runciman:** Mr. Chairman, my thanks to the member from Welland-Thorold, who is a very understanding individual, to say the least. I appreciate his ceding the floor. I just quickly want to put our views on the record with respect to his amendment. He may regret ceding the floor because, unfortunately, we're not supporting the amendment, and we wrestled with it.

I have a great deal of respect for the Office of the Ombudsman. Quite a number of years ago now I served as the Chair of the select committee on the Ombudsman. I worked with the Honourable Mr. Donald Morand, who was a truly honourable individual. I think we've had a number of fine people who served in that office. I have to say the current occupant is probably the most activist Ombudsman since the original Ombudsman, Arthur Maloney. I think the resentment on the government benches is almost palpable, when he's here and appearing before us, and resenting his activism. That's unfortunate, because I think his motivation is appropriate.

My problem and my colleague's problem is really with the concept of changing the mandate of the Ombudsman's office on a one-off basis. We don't think that that's the way this should be dealt with, and I know the Ombudsman expressed concern related to municipal affairs legislation that came before the House in December and felt that there could be a role for his office in that regard as well. I think these are legitimate points that he is raising, legitimate issues and concerns that he's raising, and they should be taken up by the Legislature, perhaps through a standing committee review of the mandate, and we can have his input and the input of others who could be impacted by any mandate changes at that time. But I think that's the appropriate way to go.

1430

I'd like to support my friend on this, but we simply can't on the basis of it being an ad hoc kind of change in the middle of the process. We don't think that would be appropriate at this time.

**Mr. Kormos:** I have no qualms. I appreciate that there are differences of opinion about this, and I respect the Conservatives who state that they don't believe this is the forum or the venue or the process within which Ombudsman oversight of the proposed, anticipated office of the independent police review director should be dealt with. However, I disagree.

Let me take you briefly to observations made by Mr. Marin which I believe to be accurate interpretations and accurate presentations about the state of the law around the Office of the Ombudsman. I am referring to his May 13, 2006, speech. Marin says, "In Ontario, by default, every provincial government body, whether it's the Ministry of the Attorney General, the SIU, Municipal Property Assessment Corporation," or—I briefly leave his quote—the office of the independent police review director, "... is subject to the statutory oversight of the Ombudsman." It's as simple as that. The Ombudsman

has jurisdiction over these bodies. The debate isn't about whether or not the Ombudsman should acquire jurisdiction; the Ombudsman has jurisdiction. The extraordinary thing that's being done here is that the government is legislatively excluding this office from the jurisdiction of the Ombudsman.

I go back now to Marin's comments from May 2006: "It is the legislated function of the Ombudsman of Ontario to investigate and to make recommendations if a government body conducts its business in a way that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or just plain wrong. The Office of the Ombudsman, reporting to the Legislative Assembly, is the ultimate check and balance" for the little guy. End of quote, although of course he says much more.

I don't think that observation by Marin is disputed or capable of being debated. It's a given. One, there's the statutory jurisdiction of the Ombudsman over government bodies. That statutory jurisdiction would exist with respect to the independent police review director were it not for section 97. And the function of the Ombudsman is to investigate and make recommendations if a government body is conducting itself contrary to law, in an unreasonable way, in an unjust way, in an oppressive way, in an improper way etc.

So one could end the argument right then and there, but Marin goes on to express special concern about 97, as it exists in this statute, and why it's of special concern to him, and I say to a whole lot of us, that the Ombudsman oversight is being legislatively barred. Further down in his speech, Marin says, and he's speaking now about this proposed office, the office of the independent police review director:

"The independent police review director will be a powerful arbiter of disputes between citizens and the police. The director will wield tremendous power over chiefs of police, all Ontario police officers and, of course, citizens who complain to him or her but will enjoy a privileged enclave accountable only internally to the Attorney General of Ontario. No court can reach into the director's filing cabinet, no court can receive the director's testimony, no court can try the director civilly, but more importantly the director will enjoy a nest perched high above others in the provincial government—and won't have to account to an outside body for his decisions, even though some may want to challenge their correctness. Any complaint about the processes, practices and policies of the director's office cannot be independently investigated. Think that you have been treated unfairly? Think that this new office's process is flawed or their policies are biased? Think that they are shirking their duties or pursuing them too enthusiastically? Tough. There's nothing you can do." End of quote.

Section 97 is the "Tough. There's nothing you can do about it" section.

Now, some have tried to portray or argue that the role of the Ombudsman would be that of an appellate level beyond that of the office of the director, and nothing could be further from the truth. The Ombudsman, just as

now, isn't an appellate body, just as now with respect to those government agencies and departments that he has legislative oversight of. What is his function? His function is, as he said, to look for unfairness, to look for injustice, to look for bad processes, to look for bias, to look for people who aren't doing their job or who maybe are doing their job too aggressively or enthusiastically.

Think about how relevant that is here in this context. This is a civilian complaints process. Hopefully, because the legislation leaves much of the process up to the new body, it will determine the process, and that's not inappropriate. Needless to say, it's not illegitimate. It's not necessarily unfair. But we all, in our constituency offices, deal with government agencies and government departments on a daily basis, acting and advocating on behalf of our constituents. Amongst us we have some very trained and experienced staff who work very, very hard in our respective constituency offices, and we find them banging their heads against the wall in frustration, trying to manoeuvre their way through bureaucratic intricacies, through the static inertia that Mr. Marin observed with respect to bureaucrats who are overly technical about the application of the rule, who apply the letter of the law rather than the spirit of the law. I talked about that relatively recently.

The Ombudsman's role vis-à-vis the office of the independent police review director, were he allowed to do his job, would not be to second-guess the director or any of those adjudicators performing their function pursuant to the legislation. More importantly, it would be to provide an avenue for people who had concerns about whether or not the process was being properly administered or in fact was properly designed. It would be a means for them to have the processes reviewed and recommendations made with respect to them.

Clearly, the director will not be an officer of the assembly. There has been some argument made, not particularly strong, that he should be, but I don't think the argument has been particularly forceful. But if he's not an officer of the assembly and not accountable to the assembly, who performs the oversight? As Mr. Marin has said as he revives that ancient phrase "*quis custodiet ipsos custodios*," who will guard the guards? The Ombudsman's office has done that in an admirable way and to the betterment of Ontario for decades now.

1440

In his submission to the committee on January 30—as a matter of fact, I believe he was the second submission at the commencement of this committee's proceedings in terms of members; first we had government staff, then we had the police association and then we had the Ombudsman—he addressed suggestions that somehow, by omitting a recommendation that the director be subject to Ombudsman oversight, LeSage was concurring with the inclusion of section 97. Let's also note that LeSage didn't recommend section 97 either.

What is most interesting is that when a person like Mr. LeSage or any other—what about this new blue-ribbon panel, the Dwight Duncan \$750,000-a-day team: Charlie

Harnick, the former Attorney General who lied under oath about lying in the Legislature—I remember that day—or Dave Cooke, the government attempting to cover all its bases, appointing a so-called New Democrat to the team? This group will write a report making recommendations, just like Marion Boyd did, remember? It's up to the government, or any of us, quite frankly, to accept all of those recommendations, some of them or none of them. But we don't delegate the drafting of legislation; we don't delegate the drafting of policy. Mr. LeSage was given a very clear set of terms of reference which did not—because he writes about his terms of reference: "My mandate was to advise on the development of a model for resolving public complaints about the police, to ensure that the system is fair, effective and transparent." He said very specifically that he wasn't asked about the Ombudsman.

Be that as it may, Mr. Marin tossed out the challenge. He said, "People are suggesting that somehow LeSage doesn't favour Ombudsman oversight." Marin, being a very careful and cautious person, clearly not wanting to violate the privacy of a conversation—but I hope nobody's suggesting Mr. Marin was anything other than truthful when he appeared before the committee—says, "I talked to LeSage, and I can tell you this: What LeSage has got to say about section 97 and Ombudsman oversight is not what some of those people who are opposed to Ombudsman oversight are saying that he's saying." Then Marin says, "Why don't you ask him yourself?" I thought that was a splendid idea. What a wonderful way of resolving this little twist and turn here and this little bit of confusion about where LeSage is—not that it's conclusive in and of itself, but I thought, if anything, it would only be fair to LeSage, which is why we put forward a motion calling upon the committee to invite LeSage to appear to address that very narrow issue of whether or not he had any views on section 97.

I was prepared to win, lose or draw to hear what he had to say. The Conservatives supported the motion, and quite frankly the motion said, "Either appear or, in writing, respond to that particular issue." The Conservatives were interested—and look, they take a position that's contrary to the New Democrats. That's fine; I understand that. But they were prepared to let LeSage come here and have that issue very specifically and clearly put to him, and if he didn't want to come, invite him to do it in writing. LeSage wouldn't have been compelled to do either if he didn't want to, would he have? He could have said, "I'm finished with this. I'm through with this. I have no more interest in it."

At least one government committee member said, "If LeSage was interested in telling us what he thought, he'd have applied to be on the committee." Do you remember that, Mr. Zimmer? Please. Mr. LeSage, a retired judge, the Honourable Patrick LeSage: It's not his function, and he shows sufficient professionalism—more than sufficient; he shows absolute professionalism and integrity in terms of not intruding where he hasn't been invited. So it's a political decision.

There are some, including from the policing community, who have, it appears, some fears that if there were Ombudsman oversight, these matters could become long and protracted and drawn out. The Ombudsman's ability to investigate an agency, a government body, and make determinations about its process etc. doesn't prolong any of the litigation or any of the process that is taking place and, indeed, completed within that body. End of story. I find it disappointing that the government persists in maintaining section 97.

I should perhaps quote Marin in his submission to the committee on January 30: "If, somehow in your deliberations, this honourable committee's final judgment on Bill 103 hinges on whether or not, as has been suggested by a government member, Mr. LeSage really intended for the Ombudsman to retain oversight of this body, I would suggest that you invite Mr. LeSage to come forward and testify before you. You will then be able to ask him the very question I have put to him and satisfy yourselves as to what he truly intended."

Remember Diogenes? The lamp? What was he looking for? Diogenes was looking for an honest man. I respect Mr. LeSage as an honest man. Why weren't we prepared to have our lamp shine on him so that this little problem around section 97 and exactly where LeSage is on the issue could be illuminated so that everybody could see and hear? Because, you see, the Liberals voted against inviting LeSage here, or voted against inviting him to respond in writing.

Finally, Marin again in his submissions to the committee: "As for the argument that you don't need Ombudsman oversight because you can always go to court, this, with respect, is a red herring. You can always bring to court any government body on a myriad of issues. It's not a substitute for the role of the Ombudsman. Going to Divisional Court is a narrow and technical affair, a costly enterprise and an adversarial process; upon reflection, I am sure you will agree with me that that is not the answer you would want to provide to constituents who are unhappy with the course of their complaints" to the independent police review director.

I am pleased to associate myself with the arguments made by Mr. Marin. I think they're sound, I think they're reasonable, and I think it is our responsibility to ensure that people, Ontarians, be they civilian complainants or be they police officers, have an Ombudsman to go to in the event that they, in the course of being subjected to the proceedings of the office of the independent police review director, feel that there are injustices, feel that there are procedural inequities, feel that there are roadblocks, feel that there are gaps, feel that there are biases that are procedural that ought to be addressed, not in the case of themselves and in their own interest but in the case of others who want to avail themselves of the procedure.

This is my motion. I'm going to be supporting it. I don't know; I find myself perhaps today in a minority of one. I can tell you that it's not the first occasion. It doesn't trouble me. I don't expect it to be the last occasion.

But I tell you this: I may be the only person on this committee who will support and call for the Ombudsman to play an oversight role. I may be the only one here, but I bet you there are millions out there who support that proposition.

1450

**The Chair:** Thank you, Mr. Kormos. Any further debate on NDP motion 63? Mr. Zimmer.

**Mr. Zimmer:** This government takes very seriously the whole issue of complaints about police officers in the province of Ontario. That's a serious issue for the continuing well-being of the people in Ontario, both for the police officers and for those who have dealings with the police officers that may result in a complaint. It's because of that very serious nature, that very serious view that we have of this issue that we engaged in a comprehensive review of the police complaints system in Ontario, which culminated in this bill, Bill 103.

To give you some sense of just how seriously we took this, we engaged, retained, appointed, a most distinguished member of the judiciary and, prior to his membership on the judiciary, a member of the bar of Ontario. Mr. Justice LeSage is the former Chief Justice of the Ontario Superior Court. Prior to that, he had a long and distinguished career at the bar with all manner of cases, civil cases, criminal cases, and a distinguished career at the Attorney General's office. After retiring from the bench, he has played a major role here in Toronto as a mediator, an arbitrator and a fact-finder. He's an experienced person and he now resides also as a senior resident at Massey College.

Justice LeSage was engaged to do this review. I want to just highlight the terms of reference that he was given. The terms of reference, from appendix A of this report, were: "To review the current system of dealing with public complaints regarding police conduct and to advise on the development of a model of resolving ... complaints against the police, to ensure that the system is fair, effective and transparent..."

"Mr. LeSage will provide his best advice and recommendations, taking into account the position of interested parties and any consensus amongst those parties on any of the issues..."

"Mr. LeSage's advice and recommendations will reflect the following principles:

"—the police are ultimately accountable to civilian authority;

"—the public complaints system must be and must be seen to be fair, effective and transparent;

"—any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and

"—the province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved."

Those were the terms of reference. On page 3 of his report, Justice LeSage accepts and indeed engages those terms of reference. He says, "My mandate was to advise on the development of a model for resolving ... com-

plaints about the police, to ensure that the system is fair, effective and transparent.”

Armed with that mandate and accepting that mandate and based on that great experience that he brought to the issue, Mr. Justice LeSage embarked on his report, which was about 113 pages when it was completed. He consulted with over 200 persons or stakeholders or institutions. He wanted to hear what everybody who had a view on this issue had to say, and it was important for him to hear all of those views so that his report considered, analyzed, thought and reflected those views and indeed helped him to make the conclusions that he did in his report. It's interesting that among the over 200 persons—I think it was about 210 or 215 persons that he consulted with or heard from—was Mr. André Marin, who at the time was the Ombudsman for National Defence and the Canadian Forces. He was essentially an ombudsman doing for National Defence and the Canadian Armed Forces a somewhat similar role to what he proposes he ought to do here with the police complaint mechanism.

Now, there has been much heard about who should have appeared here and commented and offered their views and so on. The way the system works here is that anybody who wants to appear contacts the clerk of the committee, puts in a request, and every consideration is given to accommodate them. That is the process that Mr. Marin would have used.

Mr. Justice LeSage did not appear at this committee, but the press has quoted him as saying, “The report speaks for itself.” This is the report, 113 pages, that's based on 200-plus consultations, and if you go through the 200-plus stakeholders who appeared, it is a comprehensive group of every imaginable stakeholder on this issue, including André Marin, as he then was, the Ombudsman for National Defence and the Canadian Forces.

Let me get now to some remarks on the substance in direct response to Mr. Kormos. Let me point out that since 1990, the Police Services Act has provided that the Ombudsman does not have jurisdiction to get involved in complaints involving police. The rationale there is to avoid duplication and to bring some finality to the police complaints process. Similar provisions of law existed even under the previous police complaints commissioner system that we had up and running in Ontario until 1996.

If passed, the Independent Police Review Act, 2007, is not going to change the status quo. The bill will, however, implement the LeSage report, which made 27 recommendations, none of which dealt with the jurisdiction of the Ombudsman. This is after a distinguished former Chief Justice, distinguished lawyer and distinguished arbitrator, mediator and fact-finder now in Toronto heard, presumably, whatever Mr. André Marin had to say to him in his capacity as Ombudsman for National Defence and the Canadian Forces.

The proposed new IPRD would itself play an ombudsman-like role vis-à-vis complaints about the police. Obviously, everyone supports oversight and accountability, but the IPRD would be responsible for providing that accountability in relation to public complaints about the police.

An Ombudsman for what is essentially a very specialized ombudsman that is overseeing the police complaints process could create—would create, will create—serious inefficiencies in the proposed new system. What it would essentially do is be grafting an oversight system upon an oversight system and there's no finality in that. There's no end to it.

**1500**

One of the advantages of this system is that there is this detailed oversight that the act comprehends. We've talked about the sections of the bill now for a couple of days. There are a variety of ways of dealing with complaints: There's internal oversight, there's review, there's appeal, there will be further training set out in the regulations. This system will provide the very best ombudsman oversight. We don't need an Ombudsman overseeing the work, in effect, of an ombudsman that this bill creates. I can't support this motion.

**The Chair:** Further debate?

**Mr. Kormos:** I listened carefully to the comments made by Mr. Zimmer, the parliamentary assistant. Needless to say, I find them to a large extent spurious. Mr. Zimmer should be familiar with standing order 108. I'm sure he could cite it for us now, but since he doesn't have the floor, I will. That is that “each committee shall have power to send for persons, papers and things.” It is not extraordinary nor contrary to the rules. As a matter of fact, it's quite consistent with the rules for a committee to call upon someone to appear. It's truly regrettable, because it put Mr. LeSage in a difficult position because positions have been attributed to him which may or may not be accurate. That is regrettable. Here we had an opportunity to clarify it, to allow Mr. LeSage to speak to the matter directly himself, and the Liberals would not allow that to happen.

Marin made submissions to LeSage, but the bill hadn't been written yet. LeSage made recommendations but, of course, the bill hadn't been written yet. Why couldn't, wouldn't or shouldn't any of the parties to those consultations have not been able to recognize that of course this new body will be subject to Ombudsman oversight and it's inconceivable that the government would utilize a legislative exemption like that in section 97?

It is also, in my view, a serious misunderstanding of the role and function of the Ombudsman to call the director, as created in the act, Bill 103, an ombudsman. We're not creating an ombudsman role; of course not. That's why we need an Ombudsman. Otherwise, we could say that about anything and everybody who heads a government agency, a government body, who's accountable—in this case the director—to the Attorney General and who will be, at the end of the day, a political appointment.

I hear the arguments made by Mr. Zimmer on behalf of his Attorney General. You made those arguments in as capable a way as anybody could, Mr. Zimmer. I want your masters—Mr. Bryant and the Premier—to know that you have served them well today. While there may be no reward for this service from the public of Ontario,

all of us expect you to be treated decently, at least by the offices of the Premier and the Attorney General, in view of your diligent service on their behalf.

I regret the government's position. I'm going to be putting the matter to a vote. I'll be calling for a recorded vote. Thank you kindly.

**The Chair:** Thank you. Any further debate? None? Okay. I will now put the question.

**Mr. Kormos:** A recorded vote, please.

### Ayes

Kormos.

### Nays

Balkissoon, Dhillon, Dunlop, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

**Mr. Kormos:** Chair, if I may, I think we can move reasonably promptly through the balance of amendments. I'm going to need some help getting things organized after having jumped forward to this motion that addresses section 97 and having to go back now, and there being a number of motions that have been tabled that have been rendered moot by various decisions made by the committee.

**Mr. Dunlop:** Mr. Chair, we're at motion 18.

**The Chair:** Yes, which is a PC motion. Why don't we just continue going through them, and then when we get to ones that are either moot or redundant, we can deal with that? Mr. Dunlop, would this be your motion, number 18?

**Mr. Dunlop:** Yes, it is.

I move that subsection 66(5) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "the complainant and the police officer" and substituting "the complainant, the police officer and the association."

That comes from one of the recommendations. I don't know if you're going to rule that out of order or not, but based on—

**The Chair:** Technically, it's okay. It's in order.

**Mr. Dunlop:** Okay, so just a few short comments on it: Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association. I could spend a lot more time on some of these motions if you want, but that was it in a nutshell, based on some of the requests from the Police Association of Ontario in their presentation on Tuesday.

**The Chair:** Thank you, Mr. Dunlop. Is there any further debate? None?

**Mr. Dunlop:** Record that, please.

**The Chair:** Okay. Then I'll put the question. It's a recorded vote. Shall PC motion 18 carry?

### Ayes

Dunlop.

### Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on, then, to NDP motion 19.

**Mr. Kormos:** I move that subsections 66(4), (5), (6), (7) and (8) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Informal resolution

"(4) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police shall submit the report to the independent police review director.

"Same

"(5) The independent police review director shall promptly review a written report submitted to him or her under subsection (4).

"Same

"(6) Subject to subsection (7), if on review of the written report the independent police review director believes on reasonable grounds that the police officer's conduct constitutes misconduct or unsatisfactory work performance, he or she shall refer the matter back to the chief of police for a hearing under subsection (3).

"Same

"(7) If on review of the written report the independent police review director is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the independent police review director may resolve the matter informally without a hearing, if the police officer and the complainant consent to the proposed resolution.

"Same

"(8) If an informal resolution of the matter is achieved, the independent police review director shall give notice of the resolution to the chief of police."

### 1510

This is in response to comments and input provided by Alan Borovoy and the Canadian Civil Liberties Association. It in fact replicates much of what the drafters of the bill have put into their informal resolution procedure but inserts the director into a role of effecting resolution informally. That would go a long way to address, in my view again, the impartiality concerns that have been spoken to both with respect to concerns by civilian complainants and by police officers. It would also, in my view, create a separate channel for informal resolution outside of the police-based process that would give effect to the privileged sections referred to by AG staff earlier today in terms of admissibility of statements. It would remove any ability of the chief, for instance, to become

familiar with facts and data that could subsequently come before him by way of evidence.

**The Chair:** Any further debate?

**Mr. Kormos:** Recorded vote, please.

### Ayes

Dunlop, Kormos.

### Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** That motion does not carry.

Motion number 20 is the next one.

**Mr. Kormos:** Number 20, if I can take—

**The Chair:** It's a government motion.

**Mr. Kormos:** I'm sorry. I've two different packages here.

**The Chair:** Mr. Zimmer.

**Mr. Zimmer:** I move that subsections 66(8) and (9) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Consent of police officer or complainant

(7.1) A police officer or a complainant who consents to a proposed resolution under subsection (4) may revoke the consent by notifying the chief of police in writing of the revocation no later than 12 business days after the day on which the consent is given.

"Notice

"(8) If a police officer and a complainant consent to the informal resolution of a matter and the consent is not revoked by the police officer or the complainant within the period referred to in subsection (7.1), the chief of police shall give notice of the resolution to the independent police review director, and shall provide to the independent police review director any other information respecting the resolution that the Independent Police Review Director may require.

"Disposition without a hearing

"(9) If consent to the informal resolution of a matter is not given or is revoked under subsection (7.1), the following rules apply:

"1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

"2. Subject to paragraph 3, the chief of police may impose on the police officer a penalty described in clause 85(1)(d), (e) or (f) or any combination thereof and may take any other action described in subsection 85(7) and may cause an entry concerning the matter, the penalty imposed or action taken and the police officer's reply to be made in his or her employment record.

"3. If the police officer refuses to accept the penalty imposed or action taken, the chief of police shall not impose a penalty or take any other action or cause any entry to be made in the police officer's employment record, but shall hold a hearing under subsection (3)."

This is what I'll refer to as a cooling-off-period provision. We've heard from a number of community groups who have told us how difficult this process can be for complainants. We recognize how difficult these situations can sometimes be. No one wants a complainant to accept a resolution before they have had an opportunity to properly reflect upon it, to consult with their advisers, their friends, their family and others of their choice. We are moving this amendment to provide a 12-day cooling-off period to allow the complainant to revoke their consent to any informal resolution they may have previously agreed to. The purpose of this is to build fairness into the process. The 12-day cooling-off period is fair, it's reasonable and that's why we're proposing it.

**The Chair:** Thank you, Mr. Zimmer. Is there any debate on the motion?

**Mr. Kormos:** With respect, this is wacky, Mr. Zimmer. I appreciate, again, that in the session we had this morning, where we tried to hammer out a little bit of the role, or where the informal resolution is along the sequence of events and we were reassured, or at least we were assured, that there weren't intended to be two separate streams, that if resolution was not satisfactory, if it wasn't achieved—presumably "resolution" means with the agreement of all parties willingly, voluntarily, knowingly and unpressured—then the process simply reverted back to effectively the adjudicative process.

The government didn't accept the proposition of legislating participation by police associations in a police officer's agreement or consent to an informal process. My argument was that the police of course can do that in any event. I suppose the difference is that there could be a police officer who, for whatever reason, doesn't get the sign-off of his or her association, and in the amended proposal—the amendment that didn't pass—there wouldn't be a legitimate informal resolution because the association hadn't signed off. But from a practical point of view, police officers are going to be able to consult their associations, and I trust that most, if not all, police officers, when they're facing potentially misconduct charges, are going to do precisely that.

Yet you argue this amendment from the point of view of the civilian complainant. That's what I heard. I didn't hear anybody talk about a 12-day cooling-off period during the course of submissions. A person from the civilian's end of the configuration makes a complaint to the director in some sort of form or process—e-mails it in, faxes it in, mails it in—the director looks at it and reviews it—let's say it's conduct, to avoid the policy stuff—and sends it down to the police force or police service that it arose in, to that chief of police. That chief of police looks at it, she or he determines that it's not a serious matter, and I presume then invites the parties—because it has to be with their consent. Time is all transpiring during the course of this. From the complainant's point of view—you see, the cop doesn't know about the complaint until he or she is notified of it, right? The complainants know about the complaint from the minute they decide to file it, don't they? In this respect, the

plaintiff has a little edge on the defendant. The defendant may know that they did something that could result in repercussions, but the plaintiff has the edge because it's the plaintiff who initiates the process. The defendant, the respondent, the party complained of isn't going to initiate the process. So who's cooling off here?

1520

Surely the chief of police, after he or she decides that a matter is not a serious matter, is going to give the parties reasonable time to reflect on whether or not they want to give their consent or approval to an informal resolution. If it's an informal resolution, let's get down to it and if it's not a serious matter, let's say it's—worst case—for the purpose of our argument, a cranky cop who didn't get a lot of sleep who says something inappropriate to somebody during the course of a traffic ticket or what have you, for Pete's sake, you don't want it to linger on, to malingering. You want to deal with it promptly. If it can be dealt with informally, heck, all the more reason to deal with it promptly. So what you're saying is that now there have got to be at least 12 days between when parties—no, even more so, because parties are invited to participate in an informal resolution—right?—and then they have to give their consent, so surely they're going to be given time to reflect on whether or not they want to participate. There's going to be a booklet, I hope. This is what an informal resolution may look like. Go home and talk to your family or your friends or your paralegal or the agency, the community agency that's been helping you, and see whether you want informal resolution, and then let us know within a certain time frame. You can't let these things go on forever; there's got to be a time frame. So after all this, both parties have to consent, right? They're not being put in a room and told, "Okay, you've got five minutes to agree or not agree." If you don't get sentenced, no problem, because it, the adjudicative process, goes through the regular stream then, so what's the 12 days about? How is that helpful? And how wacky is it to say, then, that the chief of police could impose any of the penalties contained in (d), (e) or (f)—which also includes (c), because (f) includes (c)—so (c), (d), (e) or (f), demote the police officer, suspend him without pay, forfeit pay and days off? Oh, but if the police officer doesn't agree, it can then go back into the dispute system.

So what do you have here? Really, you've got a police officer being coerced. You've got plea bargaining, right? You've got a chief of police saying, "Look, the way I see it right now, I can suspend you for three days, but if this goes to a hearing, we're going to be calling for a demotion, which affects your pension and all that sort of stuff." So what's the cop supposed to do then? Is that fair? Jeez, either you're going to resolve these things informally—which is why you would have been better off, in the first instance, sitting down with smart people in your ministry who have developed, again, mediation programs, systems like in the civil mediation process and what you're now promoting in the family courts, and developing a structure for a properly operated mediation

to deal with some of these, the sorts of things the Ontario Human Rights Commission used to do before you disbanded it. They cleared almost 50% or so of their complaints.

Twelve days, twelve business days, so that means 16 days: Where do you get these numbers? What's going on here? Why don't you just agree that the police association should sign off or that the police officers should say, "I've gotten advice from my association and I don't want to follow it", I don't know, but I think that's what this amendment is addressing. Blink twice if I'm right and just once if I'm not right. I think that's what this amendment is addressing, but it's a wacky way of addressing it, because I'll tell you what: See, that's why I supported the Tory proposition about effectively police associations signing off, because the corollary of that is guaranteeing that complainants have some level of some form or access to, independent legal advice, isn't it? That would have been the parallel of it. I would have been pleased to see that. Look, there's going to be a whole lot—you heard from the law student who was here from the community legal clinic run by Osgoode. They warn people, they caution some people, "Don't go into the complaints process." There are 1,001 reasons to say, "Don't go into the complaints process." I suspect you've told people, as a lawyer, and not because you're afraid of repercussions etc. but because the grievance or the conduct complained of really doesn't merit—technically, it could be a valid complaint, but how many times have you had to counsel a client and say, just as Alan Borovoy did, "Look, it's not that cops are any more sinful. It's that they are just as human as the rest of us"? That was one of the most astute things said during two days of public hearings.

How many times have you told a client, "Come on. Yeah, you can complain, but, Lord love a duck, somebody's been human here"? Right? You've done it. So I anticipate that, again, competent counsellors—and that's why I say it would have been nice to see you accept the Tory amendment. Competent counsellors counselling complainants would be in a position to say, "Whoa. No. This is a very serious problem. Please, I don't think we want to use informal resolution." They may also be saying, "Look, do you really want to pursue this? You've got bigger fish to fry. This is going to consume so much energy. It's time to move on."

So I don't know what this is. You sell people—because this is a double-edged sword. It applies to both police officers and to the civilian complainants. So you've taken an informal resolution process that has the potential, if it were properly developed, to be an effective way of meaningfully dealing with a huge chunk, I believe, of complaints about police, and now you're diluting it, because you've got to let them wait at least 12 business days before you engage in the informal resolution. So you get people to agree to the informal resolution, and then you send them home to stew about it for two weeks so their jailhouse lawyer brother-in-law can give them good legal advice, right? You know, the old

Millhaven law degree. That's what you're doing. You've got people convinced or sold on the idea of dealing with this at an informal level, presuming that it's an appropriate thing to be dealt with at an informal level, and then you send them home to stew for two weeks, again, so their Millhaven law degree brother-in-law can counsel them. I don't know. I don't think that's good. Do you really, really, in your heart think that's good policy? Like, really? I didn't think so.

**The Chair:** Thank you, Mr. Kormos. Any further debate? No further debate? I'll put the question. Shall the motion carry? All those in favour? Opposed? The motion carries.

The next motion is number 21, an NDP motion. I believe it's out of order, because it was dependent on motion number 19 having passed.

**Mr. Kormos:** So this motion becomes irrelevant. That takes us, then, to 22. That one also—are we on that one?

**The Chair:** Twenty-two?

**Mr. Kormos:** Yes, 66(9). That one—whoops.

**The Chair:** I think 22 falls into the same—

**Mr. Kormos:** Yes, 22, because that dealt with the independent adjudicator.

Number 23—oh, I'm sorry. That's yours, Mr. Dunlop.

**The Chair:** And 24 I believe is—

**Mr. Kormos:** Number 24 deals with the independent adjudicator, which the Liberals wanted no part of, an independent adjudicator. They brought out the SAM missiles and shot that one down.

**Interjection:** Same as 26.

**The Chair:** Number 24 is out of order; 25 is identical to that, I believe.

**Mr. Dunlop:** It's identical to it, yes.

**The Chair:** So that's also out of order.

**Mr. Kormos:** Number 26: another surface-to-air missile victim, right?

**The Chair:** Twenty-six is out of order, yes.

**Mr. Dunlop:** Same with 27?

**The Chair:** Same with 27.

Number 28: We've dealt with this already, similarly, but it's slightly different, so technically this one's not out of order. But it's very similar to an earlier motion that we dealt with.

**Mr. Dunlop:** I'll read it through anyway, Mr. Chair.

**The Chair:** By all means, Mr. Dunlop.

1530

**Mr. Dunlop:** I move that subsection 68(6) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant consent to the proposed resolution."

Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association as well. It's widespread practice in employee-employer

relationships that the union or association that represents an employee has a role in the discipline process.

**The Chair:** Any further debate? No?

**Mr. Dunlop:** I'll ask for that to be recorded.

**Mr. Zimmer:** Sorry. I didn't hear what you were saying.

**The Chair:** Number 28: I'm going to put the question, and Mr. Dunlop has asked for a recorded vote.

## Ayes

Dunlop, Kormos.

## Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

Motion 29.

**Mr. Kormos:** It's my amendment, and it amends 68(6) and (7). Just hold on one moment, please.

I move that subsections 68(6) and (7) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Informal resolution

"(6) If, in referring the matter to the chief of police, the independent police review director indicated that he or she is of the opinion that the conduct of the police officer constitutes misconduct or unsatisfactory work performance that is not of a serious nature, the chief of police may resolve the matter informally without a hearing, if the police officer and the complainant consent to the proposed resolution.

"Same

"(7) The chief of police shall not resolve a matter informally without approval of the proposed resolution by the independent police review director.

"Same

"(8) Subsections 66(9), (10), (11) and (12) apply, with necessary modifications, in respect of an informal resolution that is attempted but not achieved."

This is consistent with an earlier amendment that put the director in the driver's seat with respect to driving informal resolution. I need say no more. But check the vote carefully, because Mr. Zimmer's eyes just displayed some interest in this proposal. I don't want you to—don't just take any votes for granted here, Chair.

**The Chair:** Okay. Is there any further debate on this motion? None? I'll now put the question. Shall the motion carry? All those in favour? Opposed?

**Mr. Kormos:** Did somebody say no?

**The Chair:** The motion does not carry.

**Mr. Kormos:** You're lucky that the Chair is a cautious guy. You can't fall asleep at the switch like that.

**The Chair:** Motion number 30 is a government motion.

**Mr. Zimmer:** I move that subsection 68(7) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

“Same

“(7) Subsections 66(7.1), (8), (9), (10), (11) and (12) apply, with necessary modifications, in relation to an informal resolution under subsection (6).”

This is a consequential amendment, consequential to government motion number 20.

**The Chair:** Any debate? None. Shall the motion carry? All those in favour? Opposed? The motion carries.

We move then to government motion 31.

**Mr. Zimmer:** I move that subsections 69(10) and (11) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

“Consent of chief, deputy chief or complainant

“(9.1) A chief of police or deputy chief of police or a complainant who consents to a proposed resolution under subsection (9) may revoke the consent by notifying the board in writing of the revocation no later than 12 business days after the day on which the consent is given.

“Notice

“(10) If a chief of police or deputy chief of police and a complainant consent to the informal resolution of a matter and the consent is not revoked by the chief of police, deputy chief of police or complainant within the period referred to in subsection (9.1), the board shall give notice of the resolution to the independent police review director, and shall provide to the independent police review director any other information respecting the resolution that the independent police review director may require.

“Disposition without a hearing

“(11) If consent to the informal resolution of a matter is not given or is revoked under subsection (9.1), the following rules apply:

“1. The board shall provide the chief of police or deputy chief of police with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

“2. Subject to paragraph 3, the board may impose on the chief of police or deputy chief of police a penalty described in clause 85(2)(d), (e) or (f) or any combination thereof and may take any other action described in subsection 85(7) and may cause an entry concerning the matter, the penalty imposed or action taken and the chief of police’s or deputy chief of police’s reply to be made in his or her employment record.

“3. If the chief of police or deputy chief of police refuses to accept the penalty imposed or action taken, the board shall not impose a penalty or take any other action or cause any entry to be made in the employment record, but shall hold a hearing, or refer the matter to the commission to hold a hearing, under subsection (8).”

This government motion 31 builds on government motion 20.

**The Chair:** Any further debate?

**Mr. Kormos:** You just reminded me of that old Peter Sellers movie *The Mouse That Roared*. This isn’t an ad hominem comment. At first I thought it was wacky; now, as I’m reading it, it’s silly. If the informal resolution hearings are voluntary and if they don’t constitute a stream that you’re caught in—do you remember? That’s

what we were told, that you are caught in that stream. Why do you need the power to revoke when you could simply say—you don’t need that legislatively. You could simply not show up for the resolution hearing, because any outcome of the resolution hearing, or the informal resolution process, has to be with everybody agreeing, right? So why do you have to send a formal cancellation? You can go and sit like this and say, “I’m not agreeing to nothing”—effectively withdraw.

What are you doing here? You’re creating these layers. That’s why I say it reminded me of that Peter Sellers movie *The Mouse That Roared*. Remember the little kingdom with its own internal processes that existed for the sake of existing and that declared war, if I recall correctly, on non-entities. So here you are, you’re declaring war on a non-entity. You purport to address a problem or an issue, yet I don’t understand what the problem is or what the issue is. If the concern was wanting the police association to sign off on a decision, then why didn’t it just simply—I would have loved that because it would allow me to argue that the civilian complainant deserves a similar right: the protection of an advocate or independent legal advice.

But, first of all, police officers can talk to their association any time they want. If a police officer commits to informal resolution and then subsequently talks to their association and the association says, “Are you nuts?” the police office could simply call up and say, “I’m not coming to the resolution hearing.” He or she doesn’t need a statute or a statutory provision to do that, unless you really are creating a separate stream that doesn’t allow you to loop back into the adjudicative stream. I’m getting scared now. We’re going from whacky to silly to fear. Do you understand what I’m saying, Chair? You don’t need this if, in effect, you can always loop back to the adjudicative process, because you don’t have to send in your cancellation; you can be a no-show. Nothing can happen if you don’t show up—nothing. Or you can go there and fold your arms and say, “I ain’t agreeing to nothing.” Well, so much for that informal resolution session. That lasted around 15 seconds. So what are you doing, creating these notices? People are going to have forms now, and they’re going to have to be on 8.5-inch by 11-inch sheets of paper: Do not fold, do not staple; use black or blue ink only.

1540

**Mr. Zimmer, help.** We’re supposed to be here to help, not to create more grief. Go ahead, pass the motion, but you’re just padding out the bill. You’re just giving work to some poor staffer in the police association who is going to have to pore over this and see whether it makes any sense at all or whether it’s relevant at all, and I’m saying it’s not relevant at all. Why do you need a statutory provision allowing people to opt out within 12 business days—mind you, not calendar days; business days—when you can opt out simply by saying, “I don’t want to go”? You can’t hold a resolution in absentia, can you? That’s scary stuff. Oh, I see. We’ll have mediations in absentia. Oh, yeah. I suppose only in Dalton

McGuinty's Ontario could that happen, mediations in absentia. Jeez, I don't know. Look at that. Wow.

**The Chair:** Okay. Any further debate on the motion? I'll now put the question. Shall the motion carry? All those in favour? Opposed? That carries.

We'll move on to NDP motion number 32.

**Mr. Kormos:** That one, I think, is no longer relevant, if I may. NDP motion 33: That's no longer relevant. Oops—motion 34 is not mine to speak to.

**Mr. Dunlop:** Motion 34 is no longer relevant here, I suspect.

**Mr. Kormos:** Motion 35 is no longer relevant.

**Mr. Dunlop:** Motion 36 is identical to it; it's no longer relevant.

**The Chair:** Mr. Dunlop, I believe PC motion 37 is in order.

**Mr. Kormos:** You're still going to flog this dead horse, Mr. Dunlop?

**Mr. Dunlop:** Well, I think I'd like to put it on the record, Mr. Kormos.

**Mr. Kormos:** Sure. Go ahead.

**Mr. Dunlop:** I move that subsection 76(10) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer consents to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, consents to the proposed resolution."

It's the same reasoning that we had in earlier comments. I won't repeat those.

**The Chair:** Thank you. Any further debate? None? All right.

**Mr. Dunlop:** I ask for a recorded vote on that.

#### Ayes

Dunlop, Kormos.

#### Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** The motion does not carry. Motion 38.

**Mr. Kormos:** That, I think, is no longer relevant.

**Mr. Zimmer:** Ah, we've got one: motion 37a.

**The Chair:** I'm sorry. Motion 37a. My apologies.

**Mr. Zimmer:** I move that section 76 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Consent of police officer

"(10.1) A police officer who consents to a proposed resolution under subsection (10) may revoke the consent by notifying the chief of police in writing of the revocation no later than 12 business days after the day on which the consent is given."

This builds on earlier government motions on this theme.

**The Chair:** Any debate?

**Mr. Kormos:** Yes, Chair. These are like the 12 days of revocation. This will be like I don't know what. I don't

even want to talk about what this will be like because it conjures up imagery that is far better reflected on later in the evening.

**The Chair:** Sounds like a good movie title: The 12 Days of Revocation.

All right. On motion 37a, there being no further debate, all those in favour? Opposed? That carries.

The next motion is—

**Mr. Kormos:** It would have gone to the independent adjudicator. Again, the Liberals have no interest in independent adjudicators.

**The Chair:** So motion 38, then, is redundant.

**Mr. Kormos:** It's not redundant; it's just extremely pointed and valuable.

**The Chair:** I'm sorry. It's out of order, then.

**Mr. Kormos:** It's the Liberals who put no value in independent adjudicators.

**Mr. Dunlop:** The same with motion 39 too, Chair.

**The Chair:** Motion 39 is out of order.

Motion 40 has been dealt with.

**Mr. Dunlop:** And motion 41 is the same.

**The Chair:** Motion 41 is the same.

Motion 42 is an NDP motion.

**Mr. Kormos:** It's irrelevant now.

**Mr. Dunlop:** As 43 is.

**The Chair:** Motions 42 and 43 are irrelevant now. I think motion 44 is the same, is it?

**Mr. Kormos:** Motion 44 is no longer relevant.

**The Chair:** No longer relevant.

**Mr. Dunlop:** Motion 45 is identical to 44.

**The Chair:** Motion 45 as well is no longer relevant.

I believe NDP motion 46 is not relevant.

**Mr. Dunlop:** As is motion 47.

**Mr. Zimmer:** So motion 46 is gone?

**Mr. Kormos:** Just one moment.

**The Chair:** Motions 46 and 47 are not relevant. The same with motion 48, I believe; it's not relevant.

**Mr. Zimmer:** Just wait. I didn't hear Mr. Kormos. Motion 46 is gone?

**Mr. Kormos:** Motion 46 is done like dinner, as they say, Mr. Zimmer.

**The Chair:** And 47 and 48.

**Mr. Dunlop:** And 49.

**Mr. Kormos:** Motions 48 and 49; quite right.

**The Chair:** Motion 50 is also not relevant.

Motion 51—

**Mr. Dunlop:** Same.

**The Chair:** Same. No longer relevant.

**Mr. Kormos:** Motion 52: Pull that one.

**The Chair:** Motion 52 is not relevant.

Motion 53.

**Mr. Dunlop:** Motion 53 as well.

**The Chair:** Motion 53 as well is not relevant.

**Mr. Kormos:** Motion 54 isn't relevant either, but I suspect Mr. Zimmer would still want to move it.

**Mr. Zimmer:** I move that subsection 85(10) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "under this section" wherever it appears and substituting in each case "under section 84."

This, I assure you, is a technical amendment.

**The Chair:** Any debate?

**Mr. Kormos:** Can you explain that? I think I understood, because I read 85(10) and I see the reference. I withdraw my request for Mr. Zimmer to explain that one.

**The Chair:** Okay. Any further debate on government motion 54? Seeing none, all those in favour? Opposed? It carries.

We move on to motion 55.

**Mr. Kormos:** That should be disregarded.

**The Chair:** Disregarded, the same as 56. Motion 57.

**Mr. Kormos:** Disregard.

**The Chair:** Disregard.

**Mr. Dunlop:** And 58.

**The Chair:** And 58, disregard.

Now PC motion 59.

**Mr. Zimmer:** We're on 59?

**The Chair:** We're on 59, which is relevant. Mr. Dunlop.

**Mr. Dunlop:** I will read it into the record, please.

I move that subsection 93(1) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant, if any, consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant, if any, consent to the proposed resolution."

I'm along the same pattern as we've been with other motions on this. I won't win them all each time.

**The Chair:** Thank you. Any further debate? Mr. Dunlop has moved motion number 59.

**Mr. Dunlop:** I'll ask for a recorded vote on that too.

#### Ayes

Dunlop, Kormos.

#### Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** That does not carry.

Motion 59a is a government motion.

1550

**Mr. Zimmer:** I move that section 93 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Consent of police officer or complainant

"(4.1) A police officer or a complainant who consents to a proposed resolution under subsection (1) may revoke the consent by notifying the chief of police and, in the case of a complaint made by a member of the public, the independent police review director, in writing of the revocation no later than 12 business days after the day on which the consent is given."

This builds on earlier motions dealing with the same theme.

**The Chair:** Any further debate?

**Mr. Kormos:** Mr. Zimmer, you're generous in referring to it as a theme. You're probably taking liberties with the language.

**The Chair:** Any further debate? None. Mr. Zimmer has moved motion 59a. All those in favour? Opposed? That carries.

Next is NDP motion 60.

**Mr. Kormos:** This motion, again, goes back to the root motions calling for independent adjudicators. Liberals don't like independent adjudicators. I'm in the minority here.

**The Chair:** It's moot or irrelevant.

**Mr. Dunlop:** This would apply to motion 61, Mr. Chair.

**The Chair:** Okay, motion 61 as well is not relevant.

Motion 62?

**Mr. Kormos:** Yes, sir. I move that section 10 of the bill be amended by adding the following section to the Police Services Act:

"Application to special constables, etc.

"96.1 The provisions of this part relating to complaints made by members of the public to the independent police review director apply, with necessary modifications, to special constables and to employees of municipal police forces who are not police officers."

This is in response in particular to an element of the submission made by Alan Borovoy from the Canadian Civil Liberties Association. He cited an example of people who were placed in a paddy wagon and who had allegations about misconduct. The people in charge of the paddy wagon were non-police-officer staff increasingly used by police services to transport people from detention centres and lock-ups to courts and so on, and therefore the complaints process had no jurisdiction over the complaint, even though these people were acting under the direction of a chief of police and either in compliance with or not in compliance with policy. This addresses that difficulty that those complainants faced in those circumstances.

**The Chair:** Thank you. Any further debate? If none, I'll now put the question.

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Dunlop, Kormos.

#### Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

**The Chair:** That motion does not carry.

I believe that completes all the motions on section 10 of the bill.

**Mr. Zimmer:** I'm sorry, Mr. Chair, I can't hear some of the things you're saying.

**The Chair:** I believe that completes all the motions on section 10.

My next question: Shall section 10, as amended, carry? Is there any debate? None? All those in favour? Opposed? Carried.

Section 11 is the next section of the bill. Any debate on section 11? None. Shall section 11 carry? All those in favour? Opposed? Carried.

On section 12 of the bill, I believe there's government motion 64.

**Mr. Zimmer:** I move that subsection 12(2) of the bill be amended by adding the following paragraph to subsection 135(1) of the Police Services Act:

"24.1 establishing regional or other advisory committees consisting of representatives from community groups, representatives from the policing community and any other persons who may be prescribed, for the purpose of advising the independent police review director on matters relating to his or her duties under subsection 58(4), and respecting the appointment of such representatives and other persons to the committees."

The government has heard and heeded many of the suggestions by community groups to make the independent police review director an office that is accessible to the diverse communities that make up our province. We've heard and we've listened to the concerns of community groups. We will be accepting and adopting many of their suggestions, which will be implemented in regulations and through administrative action.

We do want to thank the community groups for their contribution through the committee process and their insights, which have been useful and informative. The government wants to be sure that the independent police review director can benefit from the same experience, advice and expertise that we have benefited from.

Justice LeSage recommended that advisory committees be set up to advise the independent police review director on public education, accessibility, diversity and outreach. We share that view of Justice LeSage and, to that end, we're introducing this amendment to allow these committees to be created by regulation.

**The Chair:** Is there any further debate? None? All right, then shall motion 64 carry? All those in favour? Opposed? Carried.

The next motion is number 65. I think it's an NDP motion.

**Mr. Kormos:** Yes. In view of the fact that it refers to sections that would have been created by amendments that were crushed by the Liberal caucus with their distaste for independent adjudicators, this motion is no longer relevant.

**The Chair:** Okay, so 65 is no longer relevant.

**Mr. Dunlop:** The same with motion 66.

**The Chair:** And the same with motion 66. Thank you, Mr. Dunlop.

**Mr. Kormos:** Motion 67, while it is not out of order, once again speaks to the framework that was being proposed with respect to independent adjudicators and, in view of the status of those amendments, is no longer relevant.

**The Chair:** Motion 67 is no longer relevant. Motion number 68.

**Mr. Dunlop:** The same thing would apply to 68.

**The Chair:** The same thing would apply to that.

So then with regard to section 12 of the bill, shall section 12, as amended, carry? Carried.

**Mr. Kormos:** Chair, I invite you to do motions 13 to 15 inclusive, please.

**The Chair:** Shall sections 13, 14 and 15—I don't know if there are any amendments to those sections—carry? Carried.

Shall the title of the bill, as amended, carry? Carried.

Shall Bill 103, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

**Mr. Kormos:** No.

**The Chair:** Okay, any debate?

**Mr. Zimmer:** Yes.

**The Chair:** It's one to one. All those in favour?

**Mr. Kormos:** One moment. Hold on, guys. We have to debate this.

**The Chair:** I'm sorry. All right.

**Mr. Kormos:** Do you see? You want to have it every which way but loose. First you call the vote, then I win the vote, then you decide we should have debate.

**The Chair:** I'm sorry.

**Mr. Kormos:** Look, the bill isn't ready to be reported back to the House. We're not finished our work yet. That's pretty obvious to me. This is going to be the system for the next 10, 15, 20 years. I don't think it's difficult to state that. A whole lot of people have held their noses and supported this bill because they see it as a not unreasonable beginning point or framework or structure or foundation. But I think there are areas that we haven't worked on hard enough, as simple as that.

Just increasingly, as we've gone through the bill, my frustration around the informal resolution, which is just really loosey-goosey kind of stuff, is that it's not well defined. It's the same language that's used in 97, which doesn't say much, because it wasn't well defined then. There are processes that could be built into this process that I think could be very valuable and very healthy for the community, and I wish they were here. But, regrettably, they're not.

1600

We heard from spokespeople for the racialized communities—not all of them; some of the racialized communities—and there are serious concerns. You heard about how up in certain parts of the city, confidence in the police is at all-time lows. There are ways of overcoming that, ways of building—I'm not even going to say "restoring" because one isn't necessarily sure that there was ever any to begin with—confidence and rapport with the police.

Look what happens when there isn't confidence in the police. Police have been concerned about it. We get complaints about it. Witnesses don't come forward in serious crimes. Witnesses don't come forward. You've got crimes, shootings in this city where there are eye witnesses—murders, right?—and people don't want to come forward. It could be any number of reasons, but one of the reasons that has been put forward is, again, a lack of confidence in the police. That is truly a regrettable state of affairs.

I thought that the government's opportunity here to put some structure into the informal resolution was a golden opportunity to start changing the way that many of these things are addressed, and not just in Toronto but in small-town Ontario too. One of the things we talked

about during second reading, as I recall, is that police services, police forces in this province range from police forces of seven or eight members all the way to the huge police forces of Toronto, London, Ottawa, Niagara region. I come from a regional community that has one of the larger police forces in the province.

And of course, the native policing issue simply wasn't addressed very adequately at all. The aboriginal perspective was the urban aboriginal perspective, concerns around aboriginal people in urban settings. You'll note the LeSage recommendations around outreach to aboriginal communities, and I really don't know—I suppose he could have meant both things, outreach to aboriginal communities in urban settings like Toronto and big city centres, but also outreach to aboriginal communities, native communities like those in the far north that more than a few of you have had a chance to visit: Peawanuck, Attawapiskat, the James Bay coast, the Hudson Bay coast up in Hampton's Kenora—Rainy River riding, those really remote communities. I mean, the native policing services, the NAPs, police forces with two police officers but one is off sick so you have police forces policing the whole community with one police officer. I've been there. Like some of you, I've been there. You have lock-ups with doors that don't lock. I've said this so many times: I've seen snowmobiles without tracks, boats with motors that don't work, and you need boats to get around many of those communities.

So you've got some real issues around native policing. And again, you've got the jurisdictional issue, the observation by LeSage that there's a split in the aboriginal community and amongst aboriginal communities about whether they want to buy into this police oversight system or maintain their own. His comment was reasonably clear about how there should be an offering up, an extension, a handout to the native communities that want to be dealt with within this regime, and we simply didn't do any of that, did we? There was no discussion about that whatsoever.

The failure to assure meaningful advocacy for parties to a complaint: The police had a solution. They said to involve the police association more intimately. They were very direct when it came to the informal resolution in terms of involving the police association more intimately. But then there's been nothing said about what the government proposes to do for complainants, other than to make the forms available to them. As I say, be careful about how you perceive an advocate vis-à-vis a complainant, because as much as a competent, experienced advocate can help a complainant with a legitimate grievance and pursue that in an effective way, that person can also help a complainant who has perhaps an unrealistic grievance temper their expectations and, indeed, their demands upon the system. It's a double-edged sword. Advocates can and do effectively work to not only ensure efficient passage of cases through this type of system but also to make sure that unnecessary cases don't get in there.

I don't think we've done as much as we could. I don't know when Mr. Zimmer's going to be the Attorney

General. He may take this bull by the other horn if and when that happens. But for the life of me—it just happens all the time, Chair. We get opportunities to address significant issues. Bureaucrats do their work, they lay the groundwork with the legislation, and then we just miss the opportunity. So I will be voting against reporting this back to the House because I don't think we are finished with our work here.

**The Chair:** Thank you. Is there any further debate? Mr. Zimmer.

**Mr. Zimmer:** Just very briefly, our government and this Attorney General takes very seriously the whole issue of the police complaints process. This act, the Independent Police Review Act, represents the very best of thinking as to what is appropriate for an effective police complaints process. It's fair, it's efficient, and it's fair and efficient for all parties: complainant, police officers and other stakeholders. This legislation, if ultimately passed, will enhance Ontario's reputation as a model for fair, compassionate and efficient policing. It's something that we here in Ontario can all be proud of, even members opposite.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Chair, for Mr. Zimmer to say that this bill represents the best of thinking is like saying that Paris Hilton represents the best of talent. It is more than a tad bit of an overstatement and the sort of hyperbole that diminishes all of us.

**The Chair:** Any further debate? None.

**Mr. Kormos:** Recorded vote.

**The Chair:** A recorded vote. I'll put the question: Shall Bill 103, as amended, carry? All those in favour?

#### Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

#### Nays

Dunlop.

**The Chair:** That carries. And finally, shall I report the bill, as amended, to the House?

**Mr. Kormos:** Recorded vote.

#### Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

#### Nays

Dunlop, Kormos.

**The Chair:** That motion carries.

Before we adjourn, I just want to thank staff and everyone for their help, and the committee members as well for a very good debate. I just wanted to thank everybody.

**Mr. Kormos:** And if I may, Chair, commend you for your skill handling the gavel and for sharing this process.

**The Chair:** Thank you. This committee stands adjourned.

*The committee adjourned at 1610.*





## CONTENTS

Thursday 1 February 2007

**Independent Police Review Act, 2007, Bill 103, *Mr. Bryant* / **Loi de 2007**  
sur l'examen indépendant de la police, projet de loi 103, *M. Bryant*..... JP-1099**

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Mr. John Twohig, senior counsel, policy division,

Ministry of the Attorney General

#### **Clerk / Greffière**

Ms. Anne Stokes

#### **Staff / Personnel**

Ms. Tamara Kuzyk, legislative counsel



**Legislative Assembly  
of Ontario**  
Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Wednesday 25 April 2007**

**Journal  
des débats  
(Hansard)**

**Mercredi 25 avril 2007**

**Standing committee on  
justice policy**

**Provincial Advocate for  
Children and Youth Act, 2007**

**Comité permanent  
de la justice**

**Loi de 2007 sur l'intervenant  
provincial en faveur des enfants  
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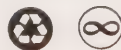
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 25 April 2007

Mercredi 25 avril 2007

*The committee met at 0905 in room 228.*

**The Vice-Chair (Mrs. Maria Van Bommel):** Good morning, everyone. I want to welcome everyone to the standing committee on justice policy.

The order of business today is Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth. We will be holding public hearings today and tomorrow here in Toronto, and we've been able to accommodate all those who have requested to appear before this standing committee.

The committee will be meeting this afternoon in room 151 rather than in this particular room. Clause-by-clause will be held on Thursday, May 3, 2007.

## SUBCOMMITTEE REPORT

**The Vice-Chair:** Our first order of business is the motion for adoption of the subcommittee report. I would ask for someone to first read the report into the record and move its adoption. Mr. Balkissoon, would you please do that?

**Mr. Bas Balkissoon (Scarborough–Rouge River):** Your subcommittee considered, on Wednesday, April 11, Thursday, April 12, and Friday, April 20, 2007, the method of proceeding on Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 165 in Toronto on April 25 and 26, 2007.

(2) That the deadline for those who wish to make an oral presentation on Bill 165 be 12 noon on Monday, April 23, 2007.

(3) That, by the deadline, if there are more witnesses wishing to appear than time available, the committee will request the approval of the House leaders to sit in the afternoons of April 25 and 26 in order to accommodate all those who wish to appear.

(4) That organizations and individuals appearing before the committee be given 15 minutes each in which to make their presentation.

(5) That an advertisement be placed for one day in all Ontario English and French daily newspapers and also be placed on the Ont.Parl channel, the Legislative Assembly website and in a press release.

(6) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location.

(7) That the committee meet for clause-by-clause consideration of Bill 165 on Thursday, May 3, 2007.

(8) That amendments be received by the clerk by 5 p.m. on Tuesday, May 1, 2007.

(9) That the deadline for written submissions be the end of public hearings.

(10) That the research officer provide the committee with a background of how other provinces deal with child and youth advocacy.

(11) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(12) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(13) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(14) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I move the report, Madam Chair.

**The Vice-Chair:** Is there any debate of the report? Seeing none, I will put the question. All those in favour? Opposed? The motion carries.

Are there any further reports to bring forward to the committee? Seeing none, I want to thank you very much for that, Mr. Balkissoon.

PROVINCIAL ADVOCATE FOR  
CHILDREN AND YOUTH ACT, 2007LOI DE 2007 SUR L'INTERVENANT  
PROVINCIAL EN FAVEUR DES ENFANTS  
ET DES JEUNES

Consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth / Projet de loi 165, Loi visant à créer la charge d'intervenant provincial en faveur des enfants et des jeunes et à y pourvoir.

## MINISTRY OF CHILDREN AND YOUTH SERVICES

**The Vice-Chair:** Our first witness is Judy Finlay for the Office of Child and Family Service Advocacy. Please come forward. You have 15 minutes for your presentation. You may use the entire 15 minutes, or less of that time, which would allow members of the committee to ask questions or make comments. Before you start, if you will put your name into the record for us, please.

**Ms. Judy Finlay:** Judy Finlay. First of all, I'd like to thank you for the opportunity to speak to you today and for allowing me to start the consultation process. This is an important moment for children in Ontario's history, and I'm thrilled that the bill for an independent child and youth advocate has received the level of support that it has from all parties. It's a crucial safeguard for vulnerable children and it's quite wonderful that everyone is onside to make it happen. As you know, it's been a long-standing dream of mine.

Secondly, I want to commend you all, and particularly the clerk, for making this process so amenable to youth voice. You have offered youth not just voice but meaningful participation in this consultation process. This rarely happens to this degree. I hope that their words and opinions will influence your decisions about this bill. This action on your part of hearing their voice and putting it into action is really the true meaning of citizenship, and our children deserve nothing less.

0910

Finally, as you know, I've been the child advocate for 16 years and have participated in the development of child advocacy across the country. There are now nine child advocates across the country. Ontario had the first child advocacy office in Canada. You may not be aware, but it was also the first child advocacy office in the world.

My presentation today draws on that experience. I can only highlight some of the critical considerations for this bill. I've offered a written submission and I've given many recommendations regarding amendments to the bill to the government, a comprehensive list, and I'm hopeful that these will be brought forward in another forum.

In terms of the most critical considerations, I'd like to speak to investigations versus reviews. I get asked this question often: Why is it that I'm not supporting the concept of investigations? Investigations presuppose neutrality and a lack of bias on the part of the child advocate. The child and youth advocate has an obligation to represent the perspective of young people. They are not impartial. I have done probably 75 reviews in the last five years and we have a standardized methodology that we use. We're administratively fair and no less rigorous than an investigation process, but we are not unbiased. When I go into an institution to talk to young people, I am there on their behalf.

At the end of any review that we do—and the bill needs to reflect this as well—recommendations need to be responded to in the time frame requested by the child

and youth advocate. And the child and youth advocate needs a right to entry without delay or restriction. This also needs to be clearly reflected in the bill. The advocate needs a right to any information that's in the custody or control of a public body, agency, institution or service provider that is required for the child and youth advocate to perform his or her duties. This means case and systemic information. Also, communication with the child and youth advocate needs to be privileged.

The second issue that I would like to raise with you is the issue around aboriginal children and youth. I have travelled the entire province regularly throughout my term as the child advocate, and I have met with and witnessed children and youth and their families in all situations and circumstances. However, aboriginal children in the remote north are without a doubt the most vulnerable children we have in this province. That's due to their geographical remoteness, the historical trauma—which continues—and poverty. There needs to be special representation required. We need to emphasize that aboriginal people are not a special interest group. Aboriginal people are a fundamental part of our history and who we are as Ontarians. The child and youth advocate needs to be dedicated to improving the circumstances of these children and ensuring equitable provision of rights and entitlements.

At the same time, the child and youth advocate needs to promote the unique sense of place, identity, language and community among aboriginal children. I thought long and hard about how this might be reflected in the bill, and it was hard to make the decision without minimizing or neutralizing the importance of aboriginal people, particularly those in the remote north. What I considered as a possibility is that the deputy advocate be a First Nations person with knowledge and experience in the remote north. That is one thing to consider.

The third consideration is that children with complex needs aren't adequately reflected in the bill. I don't know if you are aware, but that was the foundation of the work of the office when it began in the late 1970s. For the most part, when you think of the child and youth advocate you think of children in the care of the state, in custody or child welfare care or residential settings of some sort. But children in family care with very high complex needs or special needs need to be well represented in the bill as well. The role of the advocate in these circumstances is to ensure that service and supports are wrapped around these children and families. Again, this needs to be adequately reflected in the bill.

There were some excluded groups in the bill that need attention. The residential schools, the residential and demonstration schools for the deaf, hard of hearing, blind and learning disabled are not in the articles of the legislation. It is proposed that there be a memorandum of understanding. It is my belief that it needs to be reflected in the bill itself, in the act itself. If there is a memorandum of understanding, there is too much opportunity for that to be withdrawn. These children, again, have special vulnerabilities and need to be well represented through the legislation for the child and youth advocate.

All children and youth who are receiving non-custodial services through the Youth Criminal Justice Act need to be represented by the child and youth advocate. They're presently a client group of ours, and it needs to continue in the new bill.

Court holding cells and transportation to court need to be reflected in the bill as well. We've been very active with young people who have been managed in court holding cells or transported to court. In Toronto, you see those large vans that transport prisoners to and from court and detention facilities. Those large vans were created because of some of the issues that we raised in terms of the care and treatment and safety of young people being transported, so now there are large vans that are divided. That's through our intervention, just to give you an idea of how critical the issue is in terms of those young people and their vulnerability.

Finally, I'd like to speak to you about a select committee for children and youth. Presently, the office has enjoyed accessibility to government officials. We've had a very collaborative approach at all levels of government in terms of making sure that there is a timely response both in terms of case and systemic advocacy. If we have a case that we're very concerned about or if we enter a facility and we're very concerned about that, we have the channels and avenues to be able to speak to government at all levels to make sure that there's proactive intervention. These interventions often lead to policy development. Essentially, we become an early warning signal for the government to ensure that they're addressing the issues before they need to escalate unnecessarily or unduly. I'm sure that at that level there will be the opportunity for the child and youth advocate to continue with that degree of interaction.

However, the child and youth advocate reports to the Legislature through an annual report or special reports. I'm suggesting that at that level there also needs to be the opportunity for meaningful dialogue that's proactive. This is in the interest of children and youth and should be apolitical. So I'm recommending that there be a select committee for children and youth, not dissimilar from this committee, that could meet with the child advocate on a routine basis to hear what the issues are, not just at the time of annual or special reports.

Those are my comments for today. I'd welcome any questions.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you, Ms. Finlay. We have almost eight minutes left, so we'll divide it between the three parties to ask you any questions. We'll start with the Progressive Conservative Party.

**Ms. Lisa MacLeod (Nepean—Carleton):** Thank you, Mr. Chair. It's nice to see you today. And thank you, Judy, for attending today. Everyone here appreciates the work you've done on behalf of our province's most vulnerable kids, and we appreciate the amount of effort you've put into this piece of legislation.

One of the things that I was really intrigued by during your deputation was the idea of a deputy advocate re-

sponsible for aboriginal matters. I would like to hear just a little bit more of your vision on how this would all be fleshed out, and what role and responsibility this deputy advocate would have for our children in aboriginal communities.

**Ms. Finlay:** I guess I was having a great deal of difficulty seeing how the needs of that population of young people in Ontario could be foundational to the act. I think the best way of doing that is by appointing a deputy advocate who would be wholly responsible for responding to the needs and requests of children, particularly those in the remote north. That may very well mean an office in the far north.

0920

We travel very frequently. Probably once a week per month, we're in the remote reserves because of the critical issues facing children and families there. We can't attend to the issues as we should.

I believe that it needs to be a fundamental, foundational, component of the office—again, through a deputy advocate who could even be placed in the far north.

In my conversations with First Nations people—perhaps they'll say something different in the hearings—they've said to me that they want the power and authority of the office. They don't want to be separate from the office. They want it in a significant way, and they want a presence in the north, and I believe that that should happen and that should be true, and the best way of doing that is to appoint a deputy advocate and perhaps position that deputy advocate in the north.

**Ms. MacLeod:** Could we get a sense of some of the issues you deal with up north with the aboriginal community, just to highlight why you believe it's such a high need for us?

**Ms. Finlay:** Absolutely. I could go on forever.

The single most significant issue that drew us to the north, at the request of First Nations people, is the high rate of suicide of young people—nine, 10, 11, 12. This is partly because of a lack of resources on-reserve in terms of clinical or social supports. It's also because of the remoteness. It's also because of the poverty and circumstances and the difficulties kids have in even having an understanding of a vision of the rest of their lives. It's partially because of the split between their First Nations culture and non-aboriginal culture and that infiltrating into their communities and the eroding of their culture. So suicide is one of the biggest issues.

Another issue, of course, is just the abject poverty: the lack of water, the lack of provision of washrooms in houses, the lack of adequate provision of education for these young people, the cost of food, the poor quality of housing, the fact that there's a minimum of 18 people living in a two-bedroom house. Kids have to sleep in shifts because they can't all sleep in the two bedrooms at one time, so often adolescents are out at night and sleeping in the early morning hours and therefore don't get to school.

I could go on and on and on.

The circumstances in the far north—unless you’ve witnessed them, they’re really hard to accommodate. Having been there and having taken many people there—once you’ve been there and you understand the circumstances, you’re compelled to address them.

**The Chair:** We’ll move on to the New Democrats. Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** I want to welcome you, as well, and say good morning and thank you very much, not only for the work you’ve done but for the wonderful staff that you have doing that great work, and thank you for the way that you’ve taken the time to participate so fully in the process to get to where we are now.

I want you to talk a little bit about, if you can, your idea of a select committee for children and youth and what that might look like and what its role might be.

**Ms. Finlay:** Again, my experience of when the advocacy office works well is when there is proactive and collaborative interaction between the government and the office. My colleagues across the country and I have been having this kind of discussion for many years. BC is just about to put this concept into practice, and I thought it would be a good idea, as well, for Ontario. It offers the opportunity for the child and youth advocate to have less formal interactions with the government, with members of the Legislative Assembly—all parties—to begin to highlight the issues from the perspective of the child and youth advocate so there can be action taken, again, in a proactive way.

If the regular way of interacting with the government or the Legislative Assembly, to which the child and youth advocate will report, is simply through any reports or specialized reports or special reports, then I think the government would be reacting to those reports as opposed to having knowledge and understanding of the issues on a quarterly basis such that they can begin to move the issues forward more proactively and more effectively, I believe, as well.

**Ms. Horwath:** You’ve indicated that BC is about to take on this kind of structure. Are you aware of any other jurisdictions where this kind of thing is up and running?

**Ms. Finlay:** No, not at this point. Most of the offices that report to the Legislature are relatively newer offices and so they’re struggling with their interaction with the government, for sure. We’ve had dialogues. There’s a Canadian Council of Provincial Child and Youth Advocates, and we’ve had dialogues about this for quite some time. Every report becomes controversial. I don’t believe it offers the opportunity for meaningful dialogue with the government when it’s constructed in that kind of way. I’d like to see the ability for the government to hear the advocate on a routine basis and then respond, again proactively, not just simply in a reaction to an annual report.

**Ms. Horwath:** Can I just ask, Mr. Chair: Can we get from research the information from BC as to how their committee is working?

**Ms. Finlay:** It hasn’t started yet.

**Ms. Horwath:** But how they’ve structured it and what it looks like?

**The Chair:** Sure. Thank you, Ms. Horwath.

We’ll move on to the Liberal Party, then, and Ms. Van Bommel.

**Mrs. Maria Van Bommel (Lambton–Kent–Middlesex):** Thank you very much, Ms. Finlay, for the work that you’ve done all these years. It’s very interesting, and there’s a lot of information in your submission to the committee. I’m particularly intrigued by the term “excluded groups.” Can you tell us what “excluded”—it sounds so, you know—

**Ms. Finlay:** I think those groups feel that way too.

**Mrs. Van Bommel:** I’d like to know more about what makes excluded groups.

**Ms. Finlay:** Those were the groups of children that I presently provide advocacy services to that were not included in the bill.

**Mrs. Van Bommel:** Such as?

**Ms. Finlay:** Such as not having, directly in the articles in the bill, opportunity to intervene and offer advocacy services to children in the residential and demonstration schools. We have an advocate who is deaf and part of the deaf culture and part of the deaf community and is on-site in those schools. It’s proposed that there be a memorandum of understanding. I don’t think that’s sufficient. I believe that the work of the advocates in the schools, on-site, because of the vulnerability of those populations, needs to be an article in the bill as opposed to a memorandum of understanding. A memorandum of understanding offers the opportunity at any time for people to withdraw from that understanding. So it needs to be an article in the bill.

The same with—and I think it was simply an oversight. We do a lot of our work with children in the youth justice system, whether that be custody—open custody, secure custody, detention—and that’s caught in the bill through residential programs, but we also work very closely with kids who are on community service orders or probation. They are not reflected in the bill and need to be reflected in the bill.

We also have an understanding with police and corrections that kids who are being transported to court holding cells have, through signage, the opportunity to talk to advocates. We’ve been very active with those young people. There has always been a lot of difficulty in their transportation, and we’ve been able to intervene actively. That needs to be reflected in the bill as well. So those are the groups that we currently serve that are not in the bill, and that’s why I called them “excluded” groups.

**Mrs. Van Bommel:** But your practice is to serve these groups at this stage.

**Ms. Finlay:** Absolutely. Presently we do, yes.

**Mrs. Van Bommel:** And you would continue to do that?

**Ms. Finlay:** Yes, absolutely.

**The Chair:** Thank you, Ms. Finlay, for coming this morning and for your comments.

0930

## LES HORNE

**The Chair:** We'll now move on to our next deputant, Les Horne. They have a total of 15 minutes to make the presentation. Any time that they don't use up during the presentation will be used up through questions from the three parties. Good morning.

**Mr. Les Horne:** Good morning. Do you want me to start?

**The Chair:** Sure.

**Mr. Horne:** Les Horne, and I am history. I say that if you don't take notice of history—you know the old saying—you have to live it. Hegel said, "What experience and history teaches is this: that people and governments never have learned anything from history, or acted on the principles deduced from it." So I hope this is where it all changes.

I'm going to make three major points. The story of child advocacy in the Ontario government began at a time of tremendous enlightenment with a pronounced move to abandon institutional care as the predominant response to children's needs. It was in the Ministry of Correctional Services under the leadership of Allan Grossman in the time of Bill Davis that a place called White Oaks Village was established to care for the needs of children who were committed to the care of the state under section 8 of the Ontario Training Schools Act. Criminal legislation in Canada prevented children under the age of 12 being charged with criminal activity and left the problem of what to do with children who stole, set fires, stole cars or just didn't go to school to the child welfare system. Section 8 was the response. It allowed children who were out of control to be sent away for care and custody. They were sent to Cobourg until 1966. They were dressed in oversized khaki uniforms with heavy army-type boots and, if they were very good, went home for holidays like Christmas. We opened White Oaks in January 1966, and our first boys included a pair of brothers, 10 and 12 years old, from the Nishnawbe Aski Nation in Red Lake. In the words of the song, they were "Five hundred miles away from home."

My mandate was to model a family environment as closely as was possible in those days. We rapidly became known as "the Disneyland of the correctional system." I have since met many of the boys who went through White Oaks. It says nothing about the effectiveness of our treatment, but the fact that they said their time in White Oaks was the best time in their lives told us a great deal about their needs. The first rule of management that the old supervisors were taught was, "Show the kids who is boss." We replaced it with a new rule, "Let them know that you want to hear what they have to say."

The environment was changing in the 1970s. Recognition of widespread abuse of children began to hit home, but there was another movement that was equally beneficial. It began with a general recognition that we were using ineffectual methods of helping children. Our

systems demanded that a child had to be labelled to receive service and provided teams of service specialists who worked in boxes called "education," "mental health," "developmental disability" and "delinquency." Once a child was labelled, his treatment was decided by his or her label.

The second point I want to make is that there are basic principles of child advocacy, and it would be good to identify and mandate some of them in the legislation. A key principle of child advocacy is that every child is an individual. Class advocacy doesn't address those issues. His or her voice is unique. There are unique needs and circumstances and, in consequence, we supported a movement known as "hard to serve," which refused to label individuals in categories and called on the service specialists to come out of their boxes and sit down together to solve the problem of how to serve each child who had special needs. The legislation should identify this reality and mandate the advocate to provide this service. It's essential.

A young, energetic youth court judge from Kingston named George Thomson was appointed assistant deputy minister to the Ministry of Community and Social Services with a clear mandate to provide children with legislated rights and overhaul the system of child care in the province.

One of his first projects was to revise the legislation and prepare the Child and Family Services Act, which, among many changes, made provision for the first provincial advocate for children in Canada. He embraced the principle that all children, even the hard to serve, had full rights to effective care and called me to Toronto to develop the hard-to-service unit, which, a few months later, became the Office of Child and Family Service Advocacy.

There are other principles of child advocacy in Ontario that should be identified in the legislation. There are populations of children in Canada who have suffered deprivation. I will never forget a week of attendance at a trial in Pickle Lake when I realized how utterly neglected the rights of children and young people of Osnaburgh had been and how helpless I was to assist. An advocate must be mandated to protect all children and given access to the necessary resources. The only document I know that provides an authoritative summary of the rights of children in every country in the world is the UN Convention on the Rights of the Child. Very little notice is taken of that these days.

The convention was adopted by the General Assembly of the UN in November 1991. It was ratified by a huge majority of the members in the shortest time for any convention. It was ratified by Canada on May 28, 1990, and it entered into force here by the end of June. More to our point this morning, I would direct the committee to the proceedings of this Legislature on June 13, 1990, when a motion from David Reville was unanimously approved to support the acceptance and implementation of the convention.

I clearly remember the Honourable Charles Beer, Minister of Community and Social Services in the gov-

ernment of the day, standing in the House and waving a copy of this document, *Children Have Rights Too*, accompanied by warm applause from the members.

Children's rights are beyond party politics. Brian Mulroney was the Prime Minister who signed the articles of ratification. He appointed Stephen Lewis, who had been leader of the NDP in Ontario, to the post of Canadian ambassador to the UN. Stephen established a leading role for Canada in the creation of the convention. The convention has been an inspiration to all child advocates because it is authoritative and, when it is implemented, will declare that we have accorded young people in Canada the right to be treated as individual human beings and have kept the promise we made to them 27 years ago. The legislation you are discussing today is an important part of that promise.

There's a final point I want to make. One of the rights stipulated in the convention is the right to be heard. It is established in article 12, which reads:

"1. States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

"2. For this purpose, the child shall in particular be provided the opportunity to be heard" in court proceedings.

This may turn out to be one of the most critically important rights in the whole covenant with children. Here's a story to illustrate what I mean.

There was a series of inquests in Ontario on children and youth who died while they were in care. At each, there was an array of notable lawyers to represent the interests of individuals and organizations who had somehow been involved in the circumstances of the deaths. In the last two of those inquests, it was possible to find funds to hire a lawyer with a special skill for working with young people and to put together a group of children and youth who had experienced life in similar circumstances to those of the subject of the inquest.

Stephanie Jobin was a 13-year-old girl with a history of autism who died by suffocation in a group home. David Meffe was a troubled young man who committed suicide by hanging himself in the Metro Toronto Detention Centre. The intervention of the voices of young people at both inquests provided dramatic evidence that they should be an essential part of every inquiry concerning the protection of children. They turned the inquest on its head and exposed what was intended by many of the parties to stay hidden. In David Meffe's case, the jury recommended the closure of the institution.

It is a basic principle of advocacy for children that they must be heard. The prevailing symbol of advocacy must be an ear. The child advocate may need to be a good administrator—I never claimed to be that. He or she could be an impressive speaker—and that's not me. But what should the legislative committee look for when they search for the next independent child advocate of Ontario? I give you two imperatives: She or he must be

passionate about the rights of children, all children, and equally passionate about hearing what they have to say. Thank you.

**The Chair:** Thank you, Mr. Horne. We have just under nine minutes left, so we're going to go around the table, starting with the NDP; three minutes for Ms. Horwath.

**Ms. Horwath:** Thank you, Mr. Horne, for your passionate presentation today. Can I just ask you to illustrate for us what you mean when you talk about hearing the voices of children and having youth voices heard in these kinds of forums?

0940

**Mr. Horne:** When I sit and listen to you, I give you full attention. I give you eye contact, I listen to how you're saying things and why you're saying things, and I respond to you as a person. That makes you feel like a person. Many children are ignored, turned away and given the impression that what they have to say is not worth anything, particularly children in training schools and places like that, where they've already committed some offence which somehow renders them less than a person. This business of learning to listen to the child is a key thing. The best administrator in the world can fail and be useless for that reason.

**Ms. Horwath:** I think I'm asking that question because we're going to be hearing from some young people as well over the days of these hearings, so I was hoping you could educate some of us who might not have the skills as to how we can make sure that we're making the most of hearing from those young people when they come here, showing them that we care about what we're saying.

**Mr. Horne:** I suggest you get out and sit with groups of kids. That's how you learn—the only way—like you're learning a language. Kids have their own language.

**Ms. Horwath:** Absolutely. Can you tell me how you think we've done so far in the process of Bill 165 in terms of engaging youth in this legislation that is so important for them?

**Mr. Horne:** I think we have not got very far with that process. I don't hear much of the voice of youth yet in the process. I don't hear what they're saying. There may be more in this hearing, but it's lacking right now.

**The Chair:** Thank you. We move on, then, to the Liberal Party.

**Mrs. Van Bommel:** Thank you, Mr. Horne, for coming in today. I was listening to you talking about basic principles, and you talked about things like every child being unique. You also talked about identifying groups in the legislation. I'm the mother of five and the grandmother of almost 11, and I can tell you that they're all different. When we talk about identifying groups, things have changed so much since I raised my own five. We've got the Internet and this whole new set of perils for our children. If we identify groups in the legislation, is there a risk that we're going to exclude or create too much concentration on what we've identified, and we

won't give the opportunity for addressing things that evolve as they do? As I say, things are changing so fast for our children right now. I'm absolutely scared to death sometimes for my own grandchildren.

**Mr. Horne:** I feel the same about my grandchildren too. But I think by identifying the groups, you give the advocate a particular mandate to look at that, and certainly native children are a key group that has been desperately ignored. But there are other groups. The Ombudsman keeps talking about the autistic, and the struggles of autistic parents to get help, to get understanding, are just ongoing through all their lives. So all I would suggest is that the identification of groups is to strengthen the mandate. Very often, people don't serve those groups because they're expensive, because they require a special kind of resource that isn't easily available. That the advocate should have a clear mandate to go and support some of those groups is necessary. As I say, the person has to care about children, first of all, and then identify where he wants to put what resources he's given.

**The Chair:** Thank you. We move on, then, to the Progressive Conservatives.

**Ms. MacLeod:** It's just a pleasure to have you here today, Mr. Horne. I think it's totally fitting that the first child advocate is here today to speak with our current child advocate, one-two.

The one thing you wrote that stands in my mind is, "The case for listening to children is more than proved." You said that; you wrote that. I concluded my speech on Bill 165 with that quote. The unfortunate thing is that we don't have more children before us today. As one of the newest members of the Legislature, and certainly the youngest, the frustrating thing for me with this bill is the lack of consultation with children—but not only that: It's the method of how we communicate to today's children and youth. As somebody who tries to keep on top of evolving technology and how we can communicate with kids through podcasts or Facebook and through the Internet and various ways, I'm wondering: Have we done a disservice at this stage of the legislation not to have employed some of those and thought outside the box as members of this Legislature to actually get to more kids in maybe a different setting? Just because we've been doing things here for 100 years this way doesn't mean that we have to continue for the next 100 years to do it the same way, sitting around a table in suits. One of the big regrets I have in this committee is that we didn't go up north and we didn't travel to the aboriginal communities that Ms. Finlay was talking about. I would like to hear your perspective on that, Mr. Horne.

**Mr. Horne:** It's a great loss; there's no question. I understand. I've watched this process going through, and I realized that if we don't get this legislation through, it may never get through. That's the great fear behind all of us who care about what's happening here. It really has to be done. We've been pressing on this for such a long time. Therefore, anything which would delay that would break my heart, in a sense. But I agree with you. The most exciting moments in my life are times when kids

have taken over. I was at a conference in Vancouver where we were talking about this wonderful thing, the wonderful convention, and kids got up and said, "Baloney. It makes no difference to us. It doesn't change our lives a little bit." Landon Pearson, the senator, was there, and the whole conference was interrupted because the kids got up and started demanding to speak, and they were telling the truth. They have a capacity for presenting truth and for saying what it's really like that just shatters the complacency with which we live: that everything's all right in our society. It isn't.

**Ms. MacLeod:** It's interesting you say that, because I hold the view, and I think a great thinker once said, "It's easier to build strong children than to repair broken men." We want to talk about how we want this bill to move forward and how we don't want the delay because it has taken so long; it has taken over three and half years for this government to finally introduce this piece of legislation.

I'm thinking, today in this world that we live in of high technology where we're able to communicate by e-mail, where we're able to communicate online, why some of those tactics weren't employed to talk to some of these kids throughout Ontario. I come from a different region. I don't come from Toronto; I come from eastern Ontario, where, in its own right, we're losing thousands of jobs in the manufacturing sector and where there are great problems on the family farm these days, where it would be great to have been able to talk to some of those kids in rural Ontario, and eastern Ontario specifically, who are struggling with mom and dad losing their job. What would you have thought about having a different tactic employed to talk to children and youth across Ontario, a different forum for children, by children, instead of always relying just on the—especially with a bill like this? I'm not suggesting that for every single piece of legislation that comes before this Legislature we change the format. But on a bill that is for children, the protection of children, to give children a voice, is there a way that we could have, prior to this stage, even though this has been rolling very quickly, we would have been able to include them in a different way?

**Mr. Horne:** There are a number of ways. I don't think the Internet is the way to do it. I know kids love the Internet and live on the Internet—but only certain kids, only urban kids generally speaking, only kids with a certain background. The kids who are on the streets don't really use the kind of Internet that you're talking about.

**Ms. MacLeod:** Yes.

**Mr. Horne:** So we really have to sit down and work out—and we certainly have offered to do that, but it's going to take some time, and the people you ought to be speaking to are the kids themselves.

**Ms. MacLeod:** Okay—

**The Chair:** That uses up the three minutes.

**Ms. MacLeod:** I had one more question, so I can't—anyway, thank you very much, Mr. Horne. We'll talk after this.

**The Chair:** Thank you, Mr. Horne, for your presentation.

0950

CANADIAN HEARING SOCIETY,  
TORONTO

**The Chair:** The next deputation is the Canadian Hearing Society, Gary Malkowski.

Good morning.

**Mr. Gary Malkowski (Interpretation):** Good morning, Mr. Chair. My name is Gary Malkowski. I'm the special adviser to the president and CEO and also responsible for public affairs at the Canadian Hearing Society.

The Canadian Hearing Society is an agency that has worked with and for people who are culturally deaf, oral deaf, deafened and hard of hearing for 67 years. We operate in 28 offices across Ontario. CHS strives to develop high-quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals.

CHS is the leading provider of services, products and information that remove barriers to communication, advance hearing health and promote equity for people who are culturally deaf, oral deaf, deafened and hard of hearing.

All CHS offices see consumers who:

- have communication barriers with staff of children and youth services programs or children's aid societies who do not know sign language nor are familiar with culturally deaf, oral deaf, deafened and hard-of-hearing issues and communication needs;

- have minimal understanding of the Ministry of Children and Youth Services' Provincial Advocate for Children and Youth, the Ontario Ombudsman, the Ontario Human Rights Commission and the human rights tribunal's complaint and investigation procedures and request assistance in navigating the entire process from intake to prosecution;

- are currently experiencing or have experienced physical or sexual abuse during childhood and adolescence—many of these consumers have.

Now I'd like to share a quote with you. This is from Karen Frayn. She is the director of CONNECT services at the Canadian Hearing Society. She has founded mental health services across the province of Ontario, and I'll now read her quote:

"I would just like to add that all CHS offices see deaf and hard-of-hearing children who are completely defenceless victims of abuse and neglect in the children and youth services system with whom they cannot communicate. The system and family do not understand the child. The child has compromised language skills, insufficient access to information, and no advocate, including family, and therefore has no voice and is the perfect victim."

Children's aid societies; provincial schools and mainstream school boards; children and youth legal systems; children and youth physical and mental health services,

including hospitals and social services; and children and youth advocates and families are all not accessible to the deaf and hard-of-hearing child. So who will advocate for these children and youth? CHS tries to take on that role with very limited resources, but it's the government's legal responsibility. CHS does not have a child protection mandate, but the government does. CHS is warning the government that this is a vulnerable population in need of advocacy and protection. If the government fails to act, they will be legally liable.

I'm now going to share with you some background information. Recent studies report the incidence of sexual abuse in various samples of the deaf population to be between 11% and 54%, currently higher than the published data for the population in general. LaBarre (1998) suggested that the incidence of sexual abuse for children who are deaf or hard of hearing could reach as high as 92%.

Furthermore, these research studies report that deaf children are more vulnerable to abuse than the general population. Factors involved in their vulnerability or susceptibility centre around communication ability and communication access, especially if the deaf children have hearing parents or are enrolled in school programs where communication access is limited (Sullivan, 1998).

The Ministry of Education's 1991 report of the Review of Student Care at the Provincial Schools for the Deaf and Blind and Demonstration Schools noted that there were a number of allegations of abuse of students at the provincial schools for the deaf and that investigations were conducted by the police and children's aid societies.

In 1997, the Canadian Hearing Society, along with the Council of Canadians with Disabilities and the Canadian Association of the Deaf, was an intervener in *Eldridge versus British Columbia*, a landmark case in which the Supreme Court of Canada ruled unanimously that deaf Canadians are entitled to equal access and equal benefit under the Human Rights Code. All services funded directly or indirectly by government must be equally accessible and of equal benefit to deaf, deafened and hard-of-hearing Canadians as they are to hearing Canadians.

The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is accepted in the human rights field.

CHS has submitted several briefs on substantial federal and provincial pieces of legislation and regulations that assure people with disabilities the right to access and equitable treatment. The newest addition to these requirements is the August 11, 2006, federal court decision in *Canadian Association of the Deaf versus Canada*. In his ruling, the Honourable Mr. Justice Mosley wrote:

"As Canadians, deaf persons are entitled to be full participants in the democratic process and functioning of government. It is fundamental to an inclusive society that those with disabilities be accommodated when interacting with the institutions of government. The nature of

the interests affected is central to the dignity of deaf persons. If they cannot participate in government surveys or interact with government officials, they are not able to fully participate in Canadian life.”

Although technically the federal court decision only applies to the government of Canada, on a substantive and ethical level, the decision applies to municipal and provincial governments. Should the municipal and provincial governments ever be challenged in court on a similar basis, there is little to differentiate their provision of services, as well as involvement in the democratic process and functioning of government with respect to deaf and hard-of-hearing persons, as required under the Charter of Rights and Freedoms.

CHS's overall response to Bill 165 is what I'll share with you now. In general, CHS is pleased that the government established and supports the independent office of the Provincial Advocate for Children and Youth and applauds the leadership of their shift to direct reporting to the provincial Legislature. However, CHS has very serious concern with the direction that the government is taking in Bill 165 in establishing the office and with the process by which this bill has been brought forward.

CHS is concerned that Bill 165 leaves out young individuals who receive help from the advocate's office currently, such as children and youth in schools for the deaf and those on probation or in police custody. It is not clear if the advocate's office will be able to help children and youth with complex special needs.

Currently, many deaf children and youth in school boards are not able to get help from the advocate's office. Bill 165 does not seem to address this gap, leaving these children and youth still without the opportunity to get help, to receive assistance from the advocate's office.

Problems with Bill, 165, as noted: The government's plan for the Provincial Advocate for Children and Youth, as set out in Bill 165, has other serious deficiencies as well.

First, Bill 165 provides no direct inclusion of the provincial/demonstration schools. For example, the Ministry of Education and the Provincial Advocate for Children and Youth want to continue with the memorandum of understanding, and this can be cancelled by either part at any time.

Second, Bill 165 provides no guaranteed protection for deaf and hard-of-hearing children and youth in either provincial schools for the deaf or school boards.

Third, in important ways Bill 165 violates the United Nations Convention on the Rights of the Child and the recently signed United Nations Convention on the Rights of Persons with Disabilities by not providing deaf and hard-of-hearing children with help from services such as the provincial advocate's office.

Fourth, Bill 165 does not address the needs of deaf and hard-of-hearing children and youth who are in northern Ontario and rural areas who are in dire need of services from the Ministry of Children and Youth Services and the Ministry of Community and Social Services.

Bill 165 raises more questions than it answers. When the government creates laws that directly affect culturally deaf, deaf oral, deafened and hard-of-hearing children, how can they be included from the outset? Is there a role for the advocate to ensure that they are included? Should culturally deaf, oral deaf, deafened and hard-of-hearing youth help select the person who will be the advocate? Will the advocate's office continue to serve deaf children and youth at provincial schools for the deaf? Will it provide services to deaf children and youth who are in school board programs? Should the advocate have more investigatory powers? What other powers does the advocate need to be able to do their job?

#### 1000

Bill 165 does not improve the provincial advocate's office either regionally or provincially.

Our recommendations: Our recommendations for Bill 165 are offered here as amendments only if the government decides to go ahead with this bill instead of substantially redesigning the provincial advocate's office.

CHS would have preferred that, from the outset, the government had consulted the public, including persons who are culturally deaf, deaf oral, deafened or hard of hearing on how to reform the office of the Provincial Advocate for Children and Youth most effectively. CHS would be pleased to assist the government with any such consultation.

If, however, the government proceeds with Bill 165, CHS asks that the bill be amended to achieve the following:

Ensure that Bill 165 does not take away any rights from children and youth as defined in the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities;

—ensure that Bill 165 does not take away any services from children and youth at provincial schools for the deaf, which expressly includes provincial and demonstration schools in Bill 165;

—include in Bill 165 a mandate of services for deaf and hard-of-hearing children and youth who are in school board programs;

—ensure that Bill 165 shall define clearly how young culturally deaf, oral deaf, deafened and hard-of-hearing people will know about the advocate and how they will be able to get in touch with them if they should need assistance. For example, there is nothing that says that children and youth need to have that information and nothing that says that it needs to be accessible to them; for example, through the use of TTY and video relay services, being able to make a private call or to request a sign language interpreter;

—ensure that your consultations and the legislative and policy decisions that will eventually result from them will help all children and youth with disabilities, including those who are culturally deaf, oral deaf, deafened and hard of hearing, while also increasing public awareness and removing the stereotypical thinking and negative attitudes toward culturally deaf, oral deaf, deafened and hard-of-hearing children and youth;

—ensure that public consultation processes be accessible to culturally deaf, oral deaf, deafened and hard-of-hearing young people who require more lead time to contact, arrange and confirm support services such as sign language interpreters and real-time captionists. These support services enable culturally deaf, oral deaf, deafened and hard-of-hearing young people to prepare their submissions and presentations and to express their ideas in their own language or by a means accessible to them. Limited literacy levels mean that some consumers require more time to read and understand Bill 165 and its implications;

—ensure that through policy development and awareness/sensitivity training, Bill 165 confronts and eradicates ableist/audist attitudes and behaviours in the office of the Provincial Advocate for Children and Youth;

—ensure that the provincial advocate's office hires trained staff who communicate using American Sign Language and who have the knowledge, understanding of and sensitivity to culturally deaf, oral deaf, deafened and hard-of-hearing children and youth when providing services regionally and provincially;

—ensure that there are clear internal policies and procedures for providing access and accommodation for culturally deaf, oral deaf, deafened and hard-of-hearing children and youth in provincial advocate offices;

—ensure that there are clear internal policies and procedures for communication access provision for applicants and appointees to the office of the Provincial Advocate for Children and Youth; and

—provide that regular, mandatory awareness training be provided to all levels of staff of the provincial advocate's office about the communication needs of culturally deaf, oral deaf, deafened and hard-of-hearing children and youth and how to meet those needs.

In conclusion, CHS strongly endorses the immediate need for establishing and providing for the office of the Provincial Advocate for Children and Youth. Bill 165 needs to include an enforcement mechanism, quality assurance and sufficient resources to ensure that qualified accommodation measures are available; for example, sign language interpreting and real-time captioning. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the powers and functions of the Provincial Advocate for Children and Youth by strengthening Bill 165.

Bill 165 will clearly be inadequate unless amendments to include services for deaf and hard-of-hearing children and youth at provincial and demonstration schools and for deaf and hard-of-hearing children and youth who are in school board programs are made before third reading. Bill 165 falls significantly short of what is needed to strengthen and improve the effectiveness of the Provincial Advocate for Children and Youth.

CHS is prepared to work closely with the Provincial Advocate for Children and Youth to develop appropriate policies and provide awareness training for provincial advocate personnel to ensure that culturally deaf, oral deaf, deafened and hard-of-hearing children and youth

can be full participants in any services in which they may be involved.

I would also like to say that I am actually a child victim myself. I had no services to assist me. Parent abuse and school abuse was what I had experienced. I had no one to listen to me. I survived.

Personally, it is extremely important and it is such a need to have these services provided. There are many thousands of deaf and hard-of-hearing children who need the counselling and support services made accessible to them. I need you to listen to the children. Don't focus on the parents; don't focus on the professionals—don't only focus on them. They have fancy resources. They have this, that and the other, but do not forget about the deaf children such as myself who are victims. The government continues to blame us—they blame the victims continuously.

I am extremely concerned about the quality of service, and I am asking you to please listen to the needs of deaf children. Permit them, allow them to express their rightful opinion. They are truly important.

There are thousands of deaf and hard-of-hearing children who are being wasted in terms of their human resources. They are in hospitals, institutions and correctional facilities. They are missing so many wonderful opportunities. I am asking you, the government, the opposing party—I am asking all of you to improve this bill and move forward with supporting these children. Put them first. With your support, we can do so. Thank you.

**The Chair:** Thank you, Mr. Malkowski. You have used up the 15 minutes, the time allocated for you, and unless the committee has an important question—if there are a couple of minutes, with the consent of all three parties?

**Ms. MacLeod:** Maybe a minute each?

**The Chair:** We'll have a couple of minutes for each party.

**Mr. Shafiq Qaadri (Etobicoke North):** Yes. Let's rotate.

**The Chair:** I'll start with the Conservatives.

**Ms. MacLeod:** Thank you, Mr. Malkowski. I have one question. How could we have communicated better to the deaf community to improve this piece of legislation before we got here today?

**Mr. Malkowski (Interpretation):** By establishing video services. You have this in print format—the bill is in print format. Have it available in ASL so they're able to view it in their first language, American Sign Language, as well as langue des signes québécois, Quebec sign language. We have that available. The Ministry of Health, actually, put the flu information on their website, because many deaf children are unable to read the English print, but they can view it in the American Sign Language on websites.

You could host a community forum inviting those children, those youth, to come and share their experience and their feelings with you, understanding not to have that happen under the supervision of parents. Children need to feel free and not feel monitored, not have pro-

professionals or whomever monitoring and manipulating their expressions. They need to have a forum in which they can freely express their opinions and views so that you then are able to listen to their frustration, listen to what it is they need.

Parents and professionals need to learn. They need to change their attitudes. They tend to be overprotective and over-monitor these children. It does more harm than good.

**The Chair:** We'll move on, then.

**Mr. Malkowski (Interpretation):** I think it's important for them.

**The Chair:** Thank you. We'll move on, then, to the NDP. Ms. Horwath.

**Ms. Horwath:** Thank you, Mr. Chair. Gary, I'm just following up on what Ms. MacLeod was asking. I want to know specifically: Were you engaged with either the ministry or the child advocate's office in any discussion about the preparation of this bill prior to today? Were you engaged in any kind of consultation, discussion or anything at all that would have brought some of the concerns you've raised today into the drafting of the bill that we have in front of us?

**Mr. Malkowski (Interpretation):** To be fair, I do have a very good relationship with the provincial advocate's office. They have a wonderful staff, a very positive staff. The problem is that they have limited resources to be able to do what it is that they've been mandated to do. The Canadian Hearing Society has a very positive experience working with them, and not only the provincial advocates—but there is problem, a systemic issue here, as well. I would ask that this committee look to the mandate and the recommendations, and that will then help it to improve.

Judy Finlay, who presented earlier this morning, and the second presentation as well, Les Horne—you need to listen to their recommendations.

**Ms. Horwath:** Thank you.

1010

**The Chair:** Thank you. We'll move on to the Liberal Party: Mr. Qadri and then Mrs. Van Bommel.

**Mr. Qadri:** First of all, thank you very much, Mr. Malkowski, for your impassioned and inspiring remarks today and—I think I can perhaps speak for not only all members of this committee but indeed all members of the Legislature—for your continued service in this area, particularly as a former member of provincial Parliament yourself.

As a physician, I'm familiar with a number of terms with regard to hearing impairment—for example, traumatic deafness, congenital deafness—but I apologize: I'm not familiar with the term “culturally deaf,” and I'm wondering if you might explain to this committee what exactly that means.

**Mr. Malkowski (Interpretation):** Absolutely. Ten per cent of deaf children are born to deaf parents. They do use American Sign Language as their first language. For some hearing parents who use sign language as well, those children—and that would be myself. I would be a

culturally deaf individual who uses American Sign Language. Some deaf children who do not use sign language—they would prefer other methods of communication, such as voice—would be called “oral deaf.” “Deafened” are individuals who were born with their hearing and later in life do become deafened. They can speak but they cannot hear. The fourth group, being hard of hearing, may have lost some of their hearing but they do have residual hearing. They may use FM systems or hearing aids to assist them in listening auditorily. So those are the different groups.

**Mr. Qadri:** Thank you again.

**Mr. Malkowski (Interpretation):** If I can just add one very important piece for the committee: the Ministry of Education. This is a huge, huge issue. We had a community forum in Toronto and we will be having one in Ottawa tomorrow. It's important that each and every one of you listens to the community forum's concern. We had a large, large number of deaf youth who were there because they're frustrated with the current education system, and I'm speaking of both the demonstration provincial schools and the public school boards.

I would ask this committee to contact the Minister of Education. She has not responded to my letters, but she needs to respond to the concerns that are happening currently. We have to think of these children and youth, as their education and their mental health are at risk. They require these resources. They have strong needs. I would ask that you send a letter to the Minister of Education in relation to this topic asking her to move forward with an investigation.

**The Chair:** Thank you very much for your presentation, Mr. Malkowski. Someone will look into that, I'm sure.

**Ms. Horwath:** Mr. Chair, I don't know whether it's appropriate to actually move a motion that we indicate to the Minister of Education that that issue came up during our committee and that we would like her to perhaps address it. I'd be prepared to move that motion.

**The Chair:** Or to at least get the minutes from the meetings, if there are minutes available.

**Mr. Malkowski (Interpretation):** I can send you a copy of our open letter.

**The Chair:** Okay. Thank you.

**Ms. MacLeod:** Mr. Chair, I also respectfully submit to this committee that we should make the minutes of this meeting and the bill available in ASL on the website so that our hearing-impaired community will be able to communicate with us as we move forward.

**The Chair:** I think the transcripts, as opposed to minutes, may be more—

**Ms. MacLeod:** Transcript, sorry.

**The Chair:** Thank you.

**Ms. Horwath:** Mr. Chair, I don't know what happened to my motion.

**The Chair:** I'm sorry?

**Ms. Horwath:** I don't know what happened to the motion. I don't know if—

**The Chair:** You were requesting that we write to the minister?

**Ms. Horwath:** I was moving a motion that we write to the Minister of Education reflecting the concerns that were raised about deaf children in schools and bring to her attention the issues that came before our committee, particularly in terms of access to education for children who are deaf, and the mental health concerns that they have as a result of not being able to achieve success in the school system.

**The Chair:** The committee has the mandate to deal with this bill. I'm not sure if that's in the mandate of this bill. We could ask her. I'm not sure what kind of answer we're going to get. I was hoping that the transcripts may be more useful, but—

**Ms. Horwath:** Are you ruling the motion out of order, then, Mr. Chair?

**The Chair:** No, I'll rule it in order, and we can have discussion or a vote on it, if others have any further comments on it.

**Mrs. Christine Elliott (Whitby-Ajax):** I second the motion, Mr. Chair.

**The Chair:** Thank you, Mrs. Elliott. Mr. Zimmer?

**Mr. David Zimmer (Willowdale):** With the greatest respect, I don't think it's in the mandate of the committee to proceed that way. Otherwise, we get ourselves in the position, in effect, of corresponding with relevant ministers on committee business for everybody who presents before any committee, whether it's this committee on this subject or indeed any other subject. Then the committee system grinds down and becomes another forum.

The minister's office, obviously, has a transcript of this. This is a part of Hansard. The minister responsible, whether it's for the issue that we're dealing with at this committee or indeed any other committee on any other issue, receives Hansard and takes all the suggestions, comments and concerns under advisement via that Hansard transcript. That's how the committee does its business.

**The Chair:** Thank you. Any other comment? To the motion, then, of Ms. Horwath. All those in favour? Opposed? That does not carry. Thank you. It still doesn't prevent any individual member from writing directly to the minister.

Thank you again, Mr. Malkowski.

#### CONCERNED CITIZENS AGAINST CHILD PORNOGRAPHY

**The Chair:** We move on to the next presentation: Judy Nuttall, Concerned Citizens Against Child Pornography, White Ribbon Against Pornography campaign.

**Ms. Judy Nuttall:** Good morning, ladies and gentlemen. Thank you for giving me the opportunity to speak.

Concerned Citizens Against Child Pornography has worked in Barrie, Ontario, for over 10 years to bring awareness to parents and to our community that the safety of their children can no longer be taken for granted. Working with the White Ribbon Against Por-

nography campaign, each year we deliver boxes of ribbons and information to high school staff rooms. Letters containing white ribbons are sent to all members of Parliament. Boxes of ribbons with flyers have been available in banks, churches and stores. Letters have been sent to the national and local papers; interviews on local television and phone-in programs with Rogers. Letters were sent to all provincial MPPs in Ontario during the past seven or eight years, and in 2006, it is recorded in Hansard that by unanimous vote, white ribbons against pornography be worn for one day. For that, we would like to thank MPP O'Toole. In the justice committee last month, the MP for the Northwest Territories emptied an envelope full of ribbons which he receives every year from his constituents. This is not just local; this is a national organization. We also sent 8,000 letters from Barrie constituents to the judges of the Supreme Court, pleading for the age of consent to be raised as the John Robin Sharpe case was being debated.

Why am I involved in this? Let me take you back to one day soon after I had completed my probationary year for teaching. I was teaching a reception class of four- and five-year-olds in inner-city Liverpool, England. I remember seeing a little boy fall asleep, resting his head on the shoulder of the child sitting beside him as I read a story just before the end of the day. The following day, I went into school singing as I prepared the classroom for the day. I suddenly became aware of a silence—an extraordinary stillness, as if someone was holding their breath—and that stillness seemed to hang over the school. I went up the stairs and found out that the same little boy whom I'd noticed the night before had left school and met up with a "friend." This older boy had taken Eddie to a disused house, raped him and destroyed Eddie's life. That young man was 19 years old. He turned himself in to the police station and took them to where Eddie's body lay.

During the school assembly that morning, I stayed in the staff room. My eye fell on my Bible verse concerning little children, that "their angels do always behold the face of the Father." It brought me great comfort to know that Jesus knew about Eddie.

You, who are here in Toronto, have lived through the horror of the Holly Jones murder, so you may understand some degree of the trauma that we went through in the 1970s—the teachers, the children at both schools locally; the parents; and the medical, social and community workers. There was a shock element in this tragic, deviant killing that hit home right across Britain.

#### 1020

You have Christopher's Law, but I have heard repeatedly that it does not go far enough, that it has not been implemented to the necessary extent, thereby depriving it of the intended power and leaving loopholes through which the offender may slip. Stronger action must be taken to prevent a recurrence and to protect the children of our country.

Many killers have confessed to an addiction to pornography that started in their childhood or teen years, an

addiction that has become a driving motivation for sexual abuse, often for kids, which turns to murder. This is not so in every case, but you only have to hear Bundy on this, and Bernardo too, to realize that there is an inescapable link between sexual offenders who kill and pornography.

The Universal Declaration of Human Rights was and is being abused here in Canada. In exercising rights and freedoms, there must be accountability, for corrupt use of personal rights which harm other people, especially our children, then become an abuse of all our rights—your rights and mine. The rights of the victim have to be carefully balanced against the rights of the offender. Without this, we lose our freedoms, disintegrating into a justice system that has lost its way and lost sight of what justice really is.

In 1995, a judge in Toronto ruled that the man who sexually abused his 14-year-old stepchild should receive a minimum punishment. There was no concept given to the agony of the victim. Then, 1999 brought the scourge of child pornography right to our doors, in Barrie, when Cohen was found guilty of possession of and producing child porn. A jail sentence was ruled, but on being sent to the Ontario Court of Appeal, it was commuted to house arrest, causing great anger locally. Then the case of John Robin Sharpe, with all its twists and turns, emerged into the public eye—no, to the appalled vision of all countries across the world.

The linchpin of the increase in child porn in Canada centres on the age of consent. Canada has the lowest age of consent for sex in the whole world:

“At 14, Canada’s consent age ... is lower than most ... western nations ... there is no other western country that has legalized sex as low as the age of 14.... A growing number of foreign men have used the Internet to lure Canadian children....” That’s from the National Post.

“Reducing the age of consent is the key to the rise in pedophile crime, including Internet luring and abuse”—CCACP.

On asking my former MP about this, she replied that the age of consent lay with ancient law. How many other ancient laws has Canada retained? The USA and UK and other countries have updated their medieval laws on marriage and sex. Why hasn’t Canada?

“The age of consent continues to be a legal loophole by which pedophiles are abusing our children. Action must be taken, and quickly, to protect and ensure the innocence of our children.”

Here I refer back to the previous presentation with regard to the terminology of “culturally deaf.” If I may, I would like to take it into the context of child pornography and pedophile crime, for there is a cultural deafness in our country when it comes to the cries of the children and to court actions:

“Even Third World countries are more civilized and conscientious about our duty as adults to protect the most vulnerable components of our society—our children.” That’s from police chief Fantino.

“A clear and present danger is facing our children”—Focus on the Family.

“We believe the rights of children should be superior rights in our country, to the rights of perverts”—Manitoba Premier Gary Doer.

“Children abused in child pornography demonstrate multiple symptoms—emotional withdrawal; antisocial behaviour; mood swings; depression; fear; anxiety; suicide; high risk of becoming perpetrators in later life; have destructive feelings of guilt and shame”—ECPAT.

Pornography desensitizes children. Pornography motivates abuse for both children and women. Pornography leads, in some cases, to murder. This is not a victimless crime. It is a vile act which is polluting our country. Canada has outdated, time-consuming, ineffective, expensive pornography investigations and pornography laws. Outdated disclosure rules force police to examine every computer file they seize before a charge is laid. Other western countries examine a token number of files and then arrest the pedophile. The work of Project P and KINSA and other ground-breaking endeavours are making clear progress in this very stressful and difficult protective work for our children: our children in Ontario, our children of Canada.

Finally, the Name and Shame movement in England held a very apposite point, as this headline illustrates: “Named and Shamed: The MPs Who Won’t Back”—in this case—“Sarah’s Law.” It’s similar to Christopher’s Law and to Megan’s Law in the States. In the same way, a province that legalizes pornography for the home but not in public is not fulfilling the mandate to which it has been elected, and such is the state here in Ontario. We must implement laws that have strength and not seek to weaken our system so that our children suffer. This, I believe, is the mandate of this advocacy meeting. There is a silent cry that has no voice as yet from the hearts of our children. An advocate for youth and children must be there to help to break this silence, bringing help, reaching out for the children and acting proactively to hear and act for the children. I call on this meeting to raise the age of consent in order to protect the children of Canada, who are the future generations of this country and the future leaders of Canada. Thank you.

**The Chair:** Thank you for your presentation. We have about five minutes left, so about two minutes per party. We’ll start with the Liberal Party this time.

**Mrs. Van Bommel:** Thank you very much for your presentation. You talk about raising the age of consent. Do you see a role for the child advocate in doing that?

**Ms. Nuttall:** I think that the sickness that has pervaded our country as a result of the silence needs to be broken through. A child advocate or some way to reach the children so their voice can come out is vitally necessary. I go along totally with what our previous speaker mentioned. And possibly, as I’m a teacher, I might mention that a small cartoon presentation in both cases would help, because kids love pictures. Their voice needs to be heard, and it isn’t at the moment. Have I answered your question?

**The Chair:** Thank you. We move on to the Conservative Party.

**Ms. MacLeod:** Thank you very much, Ms. Nuttall. I know I speak for everyone here: There's nothing more painful for any of us to hear than a young child being sexually abused. I just want to, for your information, let you know that I fully support raising the age of consent to 16. I have a beautiful little girl, and it just pains me whenever I hear of that atrocity.

In terms of this piece of legislation, I think we've heard from the previous speaker talking about deaf children who have been abused and victimized and how there's no real way for them to communicate. It's very difficult. I would liken this, in my experience in the last year as the critic for children and youth services for the official opposition, that children, when they are victimized or abused, draw inward. I think it's more important that they have somebody whom they can rely on to communicate with passion on their behalf and to have just the simple ability to look through that child's eyes, to draw them out of that deep, dark experience that they've had.

Just if you could, in a minute, let us know exactly how you feel your presentation relates to this piece of legislation and, if anything, how it needs to be modified; if you could do that for us.

1030

**Ms. Nuttall:** I need to say that I heard for the first time last night, about 4 o'clock, that I would be speaking today, and I received the bill in my mailbox yesterday afternoon around the same time. I have read the bill. I understand—I feel strongly that what you are doing in founding this committee is a massive step in the right direction.

Children respond individually; they don't respond corporately. This is a one-to-one thing, and that's where advocacy comes in, so that they know they have somebody who stands for them, somebody they can talk to and who can actually reach into their hurt and help to bring them out into a healing situation. I don't know exactly how to answer that beyond this. I do know that the age of consent is acknowledged as the linchpin with the pornography issue, and the pornography issue is—I was going to say “a disaster”; it's a terrible thing.

**Ms. MacLeod:** It's heartbreaking.

**Ms. Nuttall:** Yes.

**Ms. MacLeod:** I think we agree.

**The Chair:** Thank you. The NDP: Mr. Marchese.

**Mr. Rosario Marchese (Trinity-Spadina):** I'm sorry, Ms. Nuttall, that I didn't hear your entire submission. I thought my colleague was going to hear it all and respond.

I've got a couple of questions that are of concern to me. They have to do with the independence of the child advocate. Page 9 of the bill talks about other reports that the child advocate is supposed to present to the minister, and I'm concerned about how that affects the independence of the child advocate. It says, “The advocate may make any other public reports as he or she considers

appropriate, and may present such a report to the public or any other person he or she considers appropriate, but shall deliver a copy of the report to the minister of any ministry to which it is relevant at least 30 days before the presentation.”

Do you think that this section, as it is worded, saying to the child advocate that he or she has to present the report and give it to the minister 30 days in advance, is an appropriate thing to do in terms of how it maintains or ought to maintain, at least in perception, the independence of the child advocate? It seems to me to allow for some attempt by the ministry to manipulate some of the content of that report, at least in perception. What do you think?

**Ms. Nuttall:** I think you can safely release information that is statistical and of general note, but I would not be in favour of breaking confidentiality. Is that where you're coming from?

**Mr. Marchese:** Well, it says that this report has to be given to the minister 30 days in advance. My concern with that is that, at least in perception, it allows the minister to be able to affect the final copy of that report. That is my concern. It may not happen, but even printing it this way permits changes, or pressure to bear upon the child advocate to make changes, to a report. That's my concern. I just wonder whether you—

**Ms. Nuttall:** I think that if a report is submitted by an advocacy group and is manipulated to fit the political thinking of the day, it is an aberration. If that is going to happen with this group, forget it, because that is what has happened so many times through the years. That is why there is a culture of silence, and that silence is what is harming our children and what has caused this incredible underground growth of things that affect our children negatively.

**Mr. Marchese:** Do I have time for another question?

**The Chair:** We've already used up about two minutes each.

Thank you for your presentation, Ms. Nuttall.

PATRICIA SPINDEL

**The Chair:** We'll move on to Dr. Patricia Spindel. Good morning.

**Dr. Patricia Spindel:** Thank you for this opportunity to make a presentation concerning Bill 165.

You have before you a written submission prepared prior to some of the positive changes that have been made to the bill, so my remarks today will highlight those changes as well as address additional amendments that would, in my view, strengthen the bill and the functions and powers of the child advocate.

My work for over 30 years has been as both a professional and volunteer advocate for and with children with serious mental health concerns or developmental disabilities and their families. At the present time, I am a professor in day-to-day contact with young people in the post-secondary education sector. Over these many years, I've learned that the title of the old song does not apply

to many children and youth in Ontario: The kids are not all right.

Young people who describe themselves as “survivors of the child welfare system” are not all right, nor are young people who have suffered horrible neglect, abuse or abandonment by their families. Children with disabilities whose families are unable to obtain the basic funding support to address their needs and who still face stigmatization and segregation in schools and society at large are not all right either. Aboriginal children who do not enjoy the basic necessities of life are not all right, nor are children who face discrimination and maltreatment because of their race or class; nor are the growing numbers of young people entering post-secondary education who are deeply troubled all right.

If ever children and youth in Ontario needed strong, fearless and independent advocacy, they need it now. Today, collectively, as legislators, opposition members, parents and citizens, we have a major opportunity to ensure that children and youth will have an effective child advocate to ensure that their voices are amplified, their concerns heard and addressed and their interests served. If we cannot adequately protect our children and preserve their best interests, then we have failed in one of the most basic tasks required of us.

At the present time, children and youth who fall under the jurisdiction of the Ministry of Correctional Services and child and family services acts will have some rights protections, but those who fall under the Ministries of Health and Education will not. This discrepancy should be addressed with respect to the child advocate’s functions. Children basically should have an advocate wherever they live or go to school.

Concerning the child advocate’s powers, the addition of public education, clause 14(1)(o), is a positive step. However, this section could be expanded beyond public education about the child advocate’s role and the act to also include public education about issues of concern to children and youth.

The addition of subsection 19(5), legitimizing the child advocate’s right to make public reports, and section 20, prohibiting lawsuits for actions undertaken in good faith, are also positive steps because they reinforce the child advocate’s ability to speak freely. However, I think a question was asked: Should the child advocate have to give prior notice? My answer to that would be an unequivocal no.

Perhaps the most positive addition is subsection 22(5), emphasizing that the child advocate “is not a public servant within the meaning of the Public Service of Ontario Act.” This of course means that staff of this office are also not members of the public service bargaining unit, and this is an important part of ensuring the complete independence of the office as well as the child advocate’s ability to independently establish the terms and conditions of their employment. However—and I note that the act does address this—benefits equal to the public service apply in subsection 22(4), and that is a positive addition.

The act now also gives the child advocate the power to inform senior government officials of policies, procedures, actions or laws that either negatively affect children and youth or otherwise place them at risk of incarceration, hospitalization or other restricted living situations.

All of these parts of my written submission have been addressed, at least to some degree. Let me now turn to the areas of concern. The first is the absence of investigative powers for the child advocate. British Columbia has established in its act the power of the child advocate to conduct investigations at the request of the Attorney General. Quebec has also granted this power to its child advocate, and Newfoundland gives the advocate the power to review or to investigate. In cases where it appears that children are being placed at serious risk, at minimum the minister must have the power to delegate investigative powers to the child advocate.

I realize that this is a contentious issue because the child advocate, by definition, has a necessary bias in favour of children, rather than being impartial. However, in compelling circumstances, it seems reasonable for the child advocate to be given investigative powers. Where it appears that action or inaction on the part of either government or service providers has grievously failed children, the child advocate should have the right to compel witness attendance and testimony, to collect evidence from witnesses placed under oath and to compel the production of records relevant to an investigation. As well, anyone providing misleading information to the child advocate or to members of her or his staff during the process of a review or investigation or anyone who fails to comply with reasonable requests by an advocate for access to children and youth and to information in the course of a review or investigation should be subject to a penalty in the form of a fine of up to \$5,000 for contempt and obstruction of a review or investigation. The right of the child advocate to determine whether or not a review or an investigation might best serve children in these circumstances should be included in the act.

#### 1040

The second concerns access issues. There should be a general presumption of right of access to children and youth and to their records where warranted in the act. British Columbia gives its advocate right of access without having to give prior warning, and Ontario should do the same. Other acts in Canada, including BC’s, give the child advocate right of access to information in the custody of a public body, and Ontario should specifically do the same.

An important omission in the act is specific to protection from reprisals or recriminations for children and youth seeking to contact the child advocate. Obstructing young people wishing to contact the office should also be subject to penalties including a fine. At the present time, the act states that an agency or service provider “shall,” not “must,” inform children of the existence of the child advocate and her or his right to access the office. This should be corrected in the act.

My third concern relates to confidentiality of information. The child advocate should not be required to disclose information obtained under the act, except where it's necessary to carry out her or his duties or powers and functions. Third parties should not be in a position to demand access to information held by this office, especially information gathered in the course of a review or investigation. This omission should be corrected in the act.

My final concern relates to freedom from political interference. Most Canadian legislation provides for specific grounds leading to the removal of a child advocate, and Ontario should do the same. Specific grounds might include incapacity, neglect of duty, misconduct and conflict of interest. These grounds need to be spelled out to ensure that no child advocate needs to avoid speaking out publicly on behalf of young people for fear of being removed from office for political reasons.

In conclusion, I believe that addressing these omissions would greatly strengthen the child advocate's abilities to better represent the interests of children and youth in this province. I thank the committee again for the opportunity to present my views on Bill 165.

**The Chair:** Thank you, Dr. Spindel. We have about seven minutes, so about two or three minutes per party. We'll start this time with the Progressive Conservative Party.

**Mrs. Elliott:** Thank you very much, Dr. Spindel, for your very insightful and succinct comments with respect to this bill. I must say at the outset that I agree with your comments entirely. When I read through the bill, the concerns that you have jumped out at me immediately as well.

I think what we've heard from many of the witnesses who have given evidence this morning is the fact that there are many children who need to be protected in very, very difficult circumstances, where there are going to be, in the child pornography example and the deaf and hard-of-hearing children, children who are extremely vulnerable and where the evidence may be very well hidden as to the extent of the abuse and the need for these children to be protected. So to me, in order to have a person who is truly an advocate for the children, the advocate must be able to investigate every aspect of the abuse or potential abuse of the child, and to be able to compel testimony is one of the most important parts of that. Otherwise, you're not really able to do your job.

Secondly, with respect to the access aspect of it, again, I agree entirely that there should not be a need for notice, because forewarning kind of defeats the purpose of it.

So I really appreciate your comments. I thank you very much for being here today, and we'll certainly address those comments as we go forward with clause-by-clause.

**The Chair:** Thank you. We'll move on, then, to the NDP.

**Mr. Marchese:** Dr. Spindel, we agree with your comments on access. We said as much in the Legislature as well. This is an area where reasonable notice should not

be required. If there is a problem, the advocate should be able to go in and check it out immediately rather than allowing the body, the agency, to be able to prepare itself to deal with such a thing. I'm assuming and hoping that the government will deal with that.

On the issue of young people's access to the advocate: They have a passive right; that is, they have the right to be informed about the existence of the advocate. They don't have direct access. Shouldn't they have direct access to the advocate?

**Dr. Spindel:** I think direct access would certainly be ideal. I believe young people should be facilitated and empowered to contact the advocate's office, but first they have to be made aware of it. If the act says that they "shall" be made aware but not "must" be made aware, I think that could be problematic. So first of all, informing young people is critical, and then providing the means for them to contact that office is critical.

**Mr. Marchese:** Right. I think they suggested, "Yeah, they can be informed," and they might provide a telephone number and so on.

**Dr. Spindel:** They have to be given the means. In other words, they have to be able to privately contact the advocate office and not have their conversations monitored.

**Mr. Marchese:** Right. Okay, thank you.

One of the powers the Ombudsman has, for example, is to be able to compel ministries to respond to a complaint or something that they have ruled on and say, "You, ministry, have to respond to it." The advocate doesn't have the same right. What do you think about that?

**Dr. Spindel:** Again, I think the advocate should have exactly the same right. I think ministries should have to respond when the child advocate raises a concern, because I don't think they ever do that lightly. So for the child advocate to raise a concern publicly would say to me that it's a very serious issue, and I think the ministries ignore issues like that at their peril. Certainly, they place children in peril when they ignore issues being raised.

**Mr. Marchese:** Related to the Ombudsman, this particular Ombudsman has been saying since 2005 that he should have oversight.

**Dr. Spindel:** Of children's aid societies, I believe, yes.

**Mr. Marchese:** That's something that I support, by the way. I've found him to be particularly effective at making governments accountable. I believe he should have such a power. Do you have an opinion on that?

**Dr. Spindel:** Yes. First of all, let me say that not all ombudsmen have been quite as effective as Mr. Marin in raising issues.

*Interjection.*

**Dr. Spindel:** But I believe that there does need to be a split of responsibilities here. I think that if the government does not give the child advocate the same powers and expand the jurisdiction to include school boards and children wherever they live, then they should expand the Ombudsman's powers. But my feeling is that the Ombudsman should be responsible for adults and that the

child advocate should be responsible for children wherever they live. With respect to the Ombudsman, obviously that should include adults in long-term-care facilities, which is another issue of concern to me. He should certainly have jurisdiction over adults in long-term-care facilities. But I think the child advocate should have responsibility for children equal to that of the Ombudsman, and should be able to compel witnesses and conduct investigations in much the same way.

**The Chair:** Thank you. We'll move on to the Liberal Party.

**Mrs. Van Bommel:** I want to say thank you very much, Dr. Spindel. My question has been addressed already, so I won't be asking any more.

**The Chair:** Thank you, Dr. Spindel, for your presentation.

### JUSTICE FOR CHILDREN AND YOUTH

**The Chair:** We'll move on, then, to the next presenter: Cheryl Milne, Justice for Children and Youth. Good morning, and welcome to the committee.

**Ms. Cheryl Milne:** Good morning, Mr. Chair and committee members. Thank you for giving Justice for Children and Youth an opportunity to present this morning our submissions in respect of Bill 165.

Justice for Children and Youth is a legal clinic operating in the city of Toronto. We've been in existence for almost 30 years. I've been at the clinic for approximately the past 16 years, which has been consistent with the tenure of our current child advocate. We have worked extensively with the current child advocacy office. In many ways, we have been the referral source for some of the legal issues that the advocacy office has not been able to resolve on behalf of particular clients. We are really pleased to see that this office is moving toward independence and we are generally supportive of the bill and what it seeks to do.

Our recommendations—first of all, I want to say that we support and very much agree with the recommendations that you've already heard this morning from Defence for Children International—Canada, and I sought not to repeat those in the brief you have before you. We think that they very comprehensively cover many of the concerns that we have. We've added some additional ones and have emphasized those that we think are of most importance to us.

First, we're suggesting that this is an appropriate piece of legislation for there to be a preamble or statement of principle that can set the guidelines for not only the operation of the office but also the expectations of the service sectors and ministries that are interacting with the new provincial child advocate. Most significantly, we would like to see a reference to the UN Convention on the Rights of the Child, the most significant human rights document pertaining to children, probably the most—it is the most—ratified or accepted human rights document the world. Ontario certainly consented to its ratification and is very much seen as being a supporter of that docu-

ment. We suggest that either in a statement of principle or a statement of purpose or, lesser so perhaps, a statement by way of a preamble, there should be recognition of the rights of Ontario children that are consistent with the UN Convention on the Rights of the Child.

#### 1050

I note that the bill itself actually recognizes one of the most important rights, in my opinion, in the UN convention, which is the right of the child to be heard and their views and preferences and opinions to be expressed and taken into consideration. That's under article 12 of the UN convention.

The importance of setting this sort of guiding principle—and I think there are others as well, and I think you're going to hear similar submissions from other groups—is that it really does establish the fact that children in this province are to be treated equally, that they have essential human dignity and autonomy. It's an opportunity, in those guiding principles, to also include those groups that you are going to hear and you have heard already feel excluded by the present bill, in that they need some special consideration, for example, aboriginal children as well as children with complex needs, some of those children who require services from multiple ministries and service sectors. By setting that out as a principle or a preamble, you actually ensure that special attention can be placed on those children.

Another recommendation that we make is with respect to the definition of "child and youth." We note that the bill itself defines "child" as in the Child and Family Services Act, which means under 18. It's our experience that there are children—young people, rather—who are still in that transition age of 18 or 19, who are still in receipt of services either under the Youth Criminal Justice Act or the Child and Family Services Act or in respect to some of the other service sectors under the Ministry of Health, who still may be in need of some advocacy, and we want to see some discretion within the office to continue to advocate for those young people.

We have also made some recommendations specifically with respect to the functions and powers of the provincial advocate. In particular—and I'm not going to go into a lot of detail; I know that the presenter following me is going to specifically deal with education, and we have joined in that particular presentation as a joint member of the Child Advocacy Project, so I won't go into detail except to say that we are in wholehearted agreement that there should be advocacy for children within the public education system. It's a big area for Justice for Children and Youth in terms of its legal advocacy for children. There's a significant gap in this province in terms of advocacy and people who can take on those issues.

Also, as our previous presenter mentioned, children who are in receipt of services through the Ministry of Health and Long-Term Care are also in need of advocacy services. The present bill really just focuses on two narrow areas, and we would like to see that expanded.

The third area is that the present bill talks about young people who are in receipt of services with respect to the

Ministry of Correctional Services and legislation dealing with young people who are serving custodial sentences. We think this should be expanded to include all young people who are in receipt of services or are being dealt with under the Youth Criminal Justice Act, and that would encompass young people who may be in a custodial situation vis-à-vis the police—in holding cells or in transportation to and from court, which is a big area where there is need of advocacy and where there can be problems—as well as young people who are receiving non-custodial kinds of sentences or services, whether it be through diversion programs or probation and the other kinds of creative sentences that are available under the Youth Criminal Justice Act. We think that as we are moving toward less and less emphasis on custody for young people in the approaches taken under the Youth Criminal Justice Act, we'd like to see that that be expanded as well.

I share the previous presenter's concerns about access to the advocate. We are very concerned about processes around confidentiality and access to information that have set up barriers to proper review and dealing with the complaints being brought forward by young people. We would like to see that those recommendations, specifically those that have been put forward by Defence for Children International-Canada, be included in the bill.

Also, we've made a recommendation—it has also been presented to you already—regarding the need for co-operation of service providers and employees who provide services to children. That was something that was part of the review that was done prior to the development of this bill. There was a recommendation, and I've made reference to that in our submission. We need to make sure that we can effectively prevent reprisal and ensure the co-operation of the people who work with young people in the work of the advocacy office.

Again, I also will answer Mr. Marchese's question in respect of the 30-day delivery requirement. We would agree that it should not be a requirement, and that it does, in our view, in fact hinder the independence of the office to require that kind of advance notice.

I'll make one final conclusion and then give you an opportunity for any additional questions—actually, I'll make two more. First, another way of including some of the most vulnerable groups in Ontario is that the provincial advocate be empowered to appoint deputy advocates. I understand that this is something that has been discussed and deemed to be necessary, specifically in respect of aboriginal children, and, we would also suggest, with youth justice.

The current advocacy office has had a distinguished history of advocating for young people in the youth justice system and has done some groundbreaking work in bringing forward their voice in the province of Ontario to understand their plight, and it has participated in coroners' inquests along with Justice for Children and Youth in some fairly difficult cases. We would like to see that role continue and that it be given the importance we think it deserves.

My final point is in agreement with the previous speaker, in that we see that there is a gap in terms of accountability for children's aid societies and an effective complaint process in that sector dealing with children. I'll leave it up to the legislators as to whether that fits with the Ombudsman's office or the provincial child and youth advocate, but it is something that needs to be addressed. It's a critical issue for our clients.

**The Chair:** Thank you for your presentation, Ms. Milne. We have about three minutes of time left, and we'll start with the NDP.

**Mr. Marchese:** Thank you, Ms. Milne. As to your last comment, we raised that in the Legislature with respect to—I'll read it again. It says, "The advocate may make any other public reports as he or she considers appropriate, and may present such a report to the public"—may—"or any other person he or she considers appropriate, but shall deliver a copy of the report to the minister," which is interesting. They "may" provide a report to the others, but "shall" to the minister. We consider that problematic, and I think the minister in the debate agreed with us. I'm assuming there will be some changes as a result of her agreement with us, but who knows?

1100

If you're going to have an independent child advocate, this speaks to the perception that there is no independence, that there's a possibility that something could happen to that report. That was the concern we raised, and I'm assuming that you were feeling the same thing around that.

**Ms. Milne:** I think it's the time frame that is the concern. It's not that they shall deliver a report to the ministry, but that—

**Mr. Marchese:** Oh, the time frame is what you're worried about the most, then?

**Ms. Milne:** I'll echo what the previous speaker said in terms of requiring the minister to respond. I think that we need to establish a pattern in which the report is taken seriously and responded to. Certainly the minister at one point will and should get a copy of that report, but not necessarily 30 days in advance. It's that sort of advance time frame that is the concern.

**Mr. Marchese:** But the point is that if you were allowed to present a report and force the ministry to respond, then it's all public. That wouldn't be a problem because it would all be out in the open. But there is no requirement for the minister to respond; therefore, it's a problem. Some of these create different kinds of problems that I hope the government will fix up or clarify.

The exclusion: You spoke to the—

**The Chair:** You have only about one minute. Sorry, Mr. Marchese. We only have one minute per party.

**Mr. Marchese:** I thought it was three or something.

**The Chair:** No.

**Mr. Marchese:** Very well; okay. Thank you.

**The Chair:** I'm under pressure here to get back on time. I've let it go on a bit.

Mrs. Van Bommel.

**Mrs. Van Bommel:** Thank you for your presentation. In part of your presentation, you were talking about confidentiality, privacy and access to information. You mentioned the Personal Health Information Protection Act. Could you expand on that particular reference for me?

**Ms. Milne:** Sure. The bill sets up a regime that looks at consent to release information that is drawn from the Personal Health Information Protection Act. One of the concerns that we have is that it sets up a system of substitute decision-makers in terms of release of information that in fact may be the service providers who are being reviewed or for whom there is a complaint, for example, if the child is a crown ward. The next in line, if the child does not have capacity, would be the children's aid society that has care of the child and may in fact be the source of the complaint from the child.

The second concern is that under the Freedom of Information and Protection of Privacy Act, there is a lesser standard in terms of capacity, and it's clearer. It's a piece of legislation that the current advocacy office is quite familiar with and has worked with, whereas the Personal Health Information Protection Act doesn't necessarily, in my view, make a neat fit, because some of the information isn't about health; it's more general—what's going on in logs and that sort of thing in terms of the facilities.

There needs to be a broader provision that allows more open access by the advocate to this information. There is an obligation of confidentiality that is imposed on the advocate. They need to be able to have better access to information in order to more effectively advocate for children and youth.

**Mrs. Van Bommel:** Thank you.

**The Chair:** Thank you. The PC Party. Ms. MacLeod or Mrs. Elliott?

**Mrs. Elliott:** I'll comment. Thank you very much, Ms. Milne, for your presentation. It contains some really excellent, practical suggestions and recommendations with respect to this bill.

I just have one question, because you have addressed the issues with respect to your comments to Mrs. Van Bommel regarding access. I see that some of your materials indicate a recommendation to compel employees of organizations to co-operate and to be able to obtain copies of records. Would you think it would also be important to be able to compel witnesses to testify under oath?

**Ms. Milne:** I don't know the answer to that, because we've got a bill here that really isn't investigative in its function and its approach. If it moves more in that direction, then absolutely, that is what is necessary. As a previous speaker talked about, giving special powers to the advocate to conduct investigations in certain circumstances: In those circumstances, they will absolutely need those powers. Otherwise the investigative function would be fairly toothless and would not really produce the kind of result one would hope for. As you move towards a more investigative function, absolutely you need those powers.

**Mrs. Elliott:** Would you advocate the investigative function in this particular circumstance, or would you prefer the model that has been presented in the bill?

**Ms. Milne:** I think that, overall, the model presented in the bill makes the most sense in terms of what the advocate has been doing and continues to do at this point in time. However, I think, at the very least, there could be more of an investigative function, perhaps in special circumstances; that that would be of greater assistance to children and youth in the province, especially in light of the fact that there are limits to the Ombudsman's authority in certain areas. There certainly needs to be some body that has more of an investigative function with respect to children and youth. There have been too many child deaths. There have been too many situations of abuse. I've participated in too many coroners' inquests. There needs to be some better accountability at some level.

**Mrs. Elliott:** I completely agree with you. Thank you.

**The Chair:** Thank you, Ms. Milne, for your presentation.

**Mr. Zimmer:** On a point of order, Mr. Chair: I'm getting concerned about our timing. It's after 11. We're running 40 minutes behind. We're three presenters behind, and we're supposed to stop at 12 o'clock. What are we going to do, in fairness to the presenters? Somehow we've got to fit them all in.

**The Chair:** Ultimately, it's not my call; it's the committee's call. I've allowed a couple of extra minutes on some of the questions. If you want me to start cutting off some of the key presenters—and all of them, in my view, deserve a chance to make their presentation, and some of the questions here are very pertinent questions—I'll cut them off, if that's the will of the committee. I've just found that the questioning has been—

**Mr. Zimmer:** But there are people who have obligations at 12 o'clock and obligations at 5:30 tonight. If we go on at this rate, we're going to have people hanging around here for over an hour. It's not fair to the presenters or to the other obligations that we have.

**The Chair:** I'll take that point under advisement and try my very best to stick to the 15-minute time limit. Again, I don't want to be cutting off people when they're doing presentations, but I understand your point.

#### PRO BONO LAW ONTARIO, CHILD ADVOCACY PROJECT

**The Chair:** We'll move on, then, to the next presentation: Pro Bono Law Ontario, Child Advocacy Project: Wendy Miller and Greg Richards.

**Mr. Greg Richards:** Thank you very much for the opportunity to speak to you this morning about Bill 165. My name is Greg Richards. I'm here on behalf of the Advocates' Society, and with me is Wendy Miller of Pro Bono Law Ontario, who is the project coordinator of the Child Advocacy Project.

The Child Advocacy Project is a joint initiative of three parties: Pro Bono Law Ontario, the Advocates'

Society, and Justice for Children and Youth. You heard from Ms. Milne, just moments ago, of Justice for Children and Youth. Pro Bono Law Ontario is an organization which is dedicated to providing free legal services to individuals in Ontario of limited means. The Advocates' Society is a group of approximately 3,500 individuals, primarily lawyers, who are dedicated to access to justice and independent bar and judiciary.

The Child Advocacy Project was formed approximately five years ago. Its mandate is to provide free legal services regarding education matters to children and youth of limited means in the public education system. Over 260 cases have been handled since the project was initiated, and in excess of 190 volunteer lawyers have been involved.

The Child Advocacy Project is supportive of Bill 165. We commend the initiative to create an independent provincial advocate dealing with children and youth in this province. We do believe, however, that it could be improved, and we've made two recommendations, which are in our material. These are on page 5 of the written submission.

1110

The first is that the Child Advocacy Project recommends the immediate inclusion of education within the jurisdiction of the provincial advocate through the regulations made under the act. Secondly, the Child Advocacy Project recommends that, following the passage of Bill 165, the new provincial advocate review the act and the current role of the children's lawyer, in order to identify the best manner in which to include education in the body of the act as an area of jurisdiction of the provincial advocate, and that the act then be amended to include education within the provincial advocate's jurisdiction.

In a nutshell, we see systemic issues in the cases we deal with—with the education system, local school boards—and it's our view and our respectful submission that the provincial advocate would be particularly suited to root out those systemic issues, report on them and deal with them.

Wendy Miller, who's on the ground daily administering the project, is here today to provide some background as to how we came to those two recommendations. She'll address you now.

**Ms. Wendy Miller:** Good morning, everyone. As Greg has mentioned, I oversee the Child Advocacy Project, which over the past five years has provided free legal advice and representation on over 260 education matters to parents and guardians of children and youth in Ontario's public school system. As you will see in our written submission, these families—many of whose children have disabilities or are vulnerable in other ways—sought legal assistance following clear violations of their children's education rights, and frequently after protracted confrontations with school administrators. Frustrated, feeling stonewalled and unable to access effective remedies within the school system, they turned to legal assistance to find justice at school.

In support of our position that education be included within the mandate of the provincial advocate, I will emphasize two points. First, the problem I've described is commonplace across Ontario, with many of the most egregious violations addressed by the Child Advocacy Project occurring in schools in small and rural communities. While significant media coverage has highlighted several systemic issues experienced by student populations in Ontario's cities, it is often the children in smaller communities who suffer the most. In these schools, resources are thinly stretched across large geographic areas and school boards often act with an air of impunity, impervious to challenges to their authority. A provincial advocate would be uniquely suited to address these inequities.

Second, education advocacy is especially urgent for young people involved with the child welfare system and is a logical extension of the role already contemplated for the new provincial advocate. Children in the care of children's aid societies face dramatically diminished life prospects due to the multiple ways that they are disadvantaged. Abuse, neglect, instability and fear often characterize their lives, and schools—one of the few environments available to them that should promote stability and achievement—are further stigmatizing these children by keeping them from enrolling, unlawfully excluding them, and making well known their intention not to educate them. The Child Advocacy Project hears regularly from foster parents and social workers that schools routinely discriminate against the children in their care. For example, one school board in eastern Ontario subjects all children in provincial care to a children's aid society protocol before enrolling them in their home school. Unlike their peers, these children must prove to school personnel that they are not a safety risk. Inclusion of education within the regulations of the new act would provide an immediate remedy for the many guardians and foster families currently fighting such blatantly discriminatory practices.

The Child Advocacy Project accepts cases on the basis of legal merit. Those assigned a lawyer concern fundamental issues of equal opportunity to education and are successfully resolved nearly 100% of the time. However, while we enjoy a healthy roster of volunteer lawyers—and to date over 190 have participated—our ability to place cases, or place them promptly enough to have a meaningful impact, depends on volunteer availability. Cases in rural communities are, not surprisingly, more difficult to place. For example, we were unable to locate a volunteer for a family in a hamlet in southwestern Ontario. After nearly two months, the family withdrew their request for assistance, choosing instead to move to another community in the hope of improving their son's educational experience.

As you will see in our submission, there exists a serious inequity in legal representation in the education context. Specifically, there are many legal resources available to school boards as compared to the few, outside of the Child Advocacy Project, that are available to

families, who too often must resolve complex legal matters with no way to ensure due process.

In my opinion, these facts underscore two critical points. Schools do acknowledge their wrongdoing when confronted with potential litigation. However, the safeguarding of education rights for Ontario's children and youth should not be left to the efforts of volunteer lawyers. Rather, it should be considered of equal importance to the security and well-being of young people as all other areas covered by this legislation and included in the new advocate's role.

I hope these arguments are persuasive, and I do thank you for your time.

**The Chair:** Thank you. There are about two minutes per party. We'll start with the Liberal Party.

**Mrs. Van Bommel:** Thank you for your presentation. There are a number of cases that you detail in your submission that certainly raise real concern. How are children made aware of the child advocate and the role the advocate could have? Are they made aware of that through the school system?

**Ms. Miller:** Of the Child Advocacy Project? Of our work?

**Mrs. Van Bommel:** Yes.

**Ms. Miller:** Not through the school system, generally speaking; lots of word of mouth, lots of outreach on our part. I do presentations across the province to make people aware of the service, as we do have a provincial mandate.

**Mrs. Van Bommel:** I notice that you talk about problems being particular to rural and small communities. I just wondered how you make sure that families know your service is available.

**Ms. Miller:** It's not easy. We do our best. We are located in downtown Toronto, but I would like to stress, as I've said, that most of the problems we see, the most egregious problems, happen outside of the areas where the bulk of lawyers are practising.

**The Chair:** We'll move on to the Conservative Party.

**Mrs. Elliott:** Ms. Miller and Mr. Richards, thank you very much. As a fellow lawyer I'm certainly familiar with the work you do with Pro Bono Law Ontario and the excellent outreach you've done both to members of our profession, to get them involved in doing this important work, as well as to the public.

I certainly agree with you that this kind of advocacy in schools shouldn't be left to volunteer lawyers to do. There should be someone looking out for the children in our schools. Certainly it's a very difficult area for parents to manoeuvre. I hear about this very often in my community office. I think that if we are going to the trouble of setting up this office, we should really extend it to the educational system.

I guess my only question would be, do you feel confident that the powers the child advocate will be given under this bill are sufficient to deal with the concerns of children and families within the school system?

**Mr. Richards:** First of all, we support the concept of an independent and strong child advocate. We recommended, in our second recommendation, that the pro-

vincial advocate review the act thoroughly in the context of the current jurisdiction of the children's lawyer and come forward with recommendations to enshrine in the act itself the most effective way of including education within the body of the act. We are very anxious that this act proceed. As an interim measure, we have recommendation 1, which is to have the power and jurisdiction over education included by regulation.

**Mrs. Elliott:** Do you think that any of the provisions in the act are an impediment to the ability of the child advocate to deal with certain situations in schools; for example, to obtain access to children's records, to get information from school board or school employees? Are you concerned by any of that, or do you think the provisions with respect to the powers and abilities to act are adequate as they presently stand?

**Mr. Richards:** Thank you for that question. Our immediate concern is that education isn't in the jurisdiction whatsoever. So we have a provincial advocate for children and youth that arguably has no jurisdiction to look at any education matter, no matter how egregious or how systemic the issue may be. This is what alarms us to the degree it does. In our respectful submission, that has to be included to make this provincial advocate the effective and tremendous agency that it could be.

1120

**The Chair:** Thank you. We'll move on to the NDP.

**Ms. Horwath:** I don't disagree with your perspective; I think, in fact, most people in the room would agree. My question is in terms of the process. Have you had an opportunity to speak to the minister or any of the ministry representatives in the drafting process of this bill to raise that issue and ask that it be included, the Minister of Children and Youth Services and/or the Minister of Education? Has any of that discussion or effort been made up until this point?

**Mr. Richards:** We haven't been engaged in a dialogue with the Ministry of Education. We're generally engaged in dialogue on a much more on-the-ground level, and that is individual cases, individual children and youth encountering difficulty in the school system.

**Ms. Horwath:** What about the Minister of Children and Youth Services? Have you talked to that minister and/or her staff about the need to include education in the scope of the advocate's work?

**Mr. Richards:** To date, we have not been engaged at that level. We've been engaged, as I say, on the ground. We welcome this opportunity to identify what we see is a significant gap in the current bill, of which in general we're very supportive of the concept. But we see education as an essential ingredient to be included in the jurisdiction of the provincial advocate.

**The Chair:** Thank you for your presentation.

ANNE MARSDEN

**The Chair:** We'll move on, then, to the next deputant, Anne Marsden. Good morning.

**Ms. Anne Marsden:** Good morning. You might be wondering why I have my mom and dad's—I call them

my mom and dad's—medals from World War II. I believe these give me the right of passage to be at this committee today, but I also think they give me the right of passage to be listened to at this committee today. The sacrifices my parents made, the same as many parents in this room, were very significant to allow us to have a justice policy committee that would listen to the people and make the appropriate changes that need to be made to properly protect our children.

When I've come before you in the past, I've come as audit manager for The Auditors, the Canadian Family Watchdog. I'm passing a piece of our letterhead around. Yesterday was the end of that season. I am no longer the audit manager. The Auditors, the Canadian Family Watchdog, is no longer in existence. The letterhead was formed to represent the family and the family watchdog position that we took on. The little dog was drawn by a young person. His name was Otis.

The first case that was brought to my attention, from 1971, was a Mr. Johannes Stevens. Our audits show that there was no justice for Mr. Stevens till the day he died. Otis was his dog. Otis died very recently. He'd been fed the food that many of our pets have been fed that have caused them to die from poisoning. I think that is very symbolic of the end of The Auditors, the Canadian Family Watchdog.

Not only do I come here because of the rite of passage my parents provided to me, I come here because of the credentials I have, which I believe allow me the privilege of being listened to. I'm respected at the national level for my ability to improve services. I'm respected at the international level to speak to people and give them the benefit of my experience and the audits that I've conducted in Ontario since 1990 that would allow me to make suggestions for changes, etc.

One of those areas is child protection, which I've been auditing for the last 15 years. When I say "auditing," I mean at every level of the child protection system, including the previous five children's ministers whose responsibility it was to properly advocate for our children.

I see the appointment of an advocate's office under Bill 165 as an indication of the dereliction of the duty of our children's minister. She is appointed to be our child advocate. That's the reason for her position as children's minister. If you look in your Child and Family Services Act, you will see that our children are given several rights, and it's the advocate's job to ensure that those rights are sustained for those children. One of those rights is the right to meet privately with the Ombudsman of Ontario. How many children know they have that right? I would suggest, very few, and I would suggest that the Ontario Ombudsman has not met privately with one of those children.

They also have the right to meet privately with their MPP and their MP. I know I have tried to have MPPs meet with these children. The children have personally phoned the MPP and asked them to come and meet privately with them, and all we got for our efforts was a letter from the ethics minister that this wasn't allowed,

even though we have it set out in our legislation that this is their right. These children are being denied their rights.

These audits also audited the child advocate office. We had a child who was locked in a garage in the middle of winter without a coat in a home where they'd been placed to protect their interests. The child kicked the door down—wouldn't you?—to get out. The police were brought and he was charged with mischief. The child advocate's office was called, an investigation was made, and although that home is not allowed to lock children in a room, there was no discipline. The child was convicted of mischief.

How can we possibly hold our heads up high in this world when we have legislation in place to protect children and we ignore it?

The minister, like the ministers before her, has had the opportunity to investigate when our audits clearly show that the children's best interests have not been protected by the courts, by the lawyers, by the CAS. We have presented our audits to ministers in the past and this one. This one was presented by MPP Andrea Horwath, asking the minister to undertake her responsibilities under section 67 of the Child and Family Services Act and undertake a review by a judge.

I have passed out today—hopefully you've received it—this particular audit, a "summary of audit" that shows two children—you should have this. It was forwarded to Mr. Dwyer. If not, I hope you will ensure that you do receive a copy and that you thoroughly review it. This shows a contradiction of the words "advocate" and "democracy." I think those of you who are familiar with Judgement at Nuremberg will understand that judges were on trial because they were following the rules of the day and the laws of the day, which were inhumane. Today, in Ontario, in Canada, we have judgments being made outside rules of law set in place to protect children, protect our elderly, protect all those and allow them to be treated with dignity. Those rules are not being followed.

In this country I live in, to which I came for a two-year working holiday and I'm still here 25-plus years since, it is known, just by looking at our Lieutenant Governor, that you can live at a garbage dump and become Lieutenant Governor of Ontario. In his book *Out of Muskoka*, he brought our attention to something else, though: that people rise to positions and put themselves in positions to feed an obsession for things which are outside the law. He talks about a teacher he came across who liked to inflict pain. He became a teacher, knowing full well that when he was discovered by his peers—one of them being James Bartleman—it would be hidden. Nobody would speak out. Nobody would do what they have to do: speak out for that person who is being treated the way they are.

1130

I've heard a lot of comments on this bill. My position is: What is the point of having one more bill when the bills we have are not being respected by those who have been elected and put in positions? This committee has an opportunity to say to the minister, "Minister, we have an

audit here which shows that you have the strength of the law behind you to deal with the situations that are leaving our children destroyed." Why not take up that opportunity?

I'm very willing to come before this committee, before the Attorney General, before the ministry itself, with my audited documents and answer any questions which show this. A lawyer has reviewed my audit and agrees with it. I'm here to answer any questions. You also have a copy of an audit at the other end of the scale, our elderly. I would ask that you read that and do what you believe it's right to do. That's why you're here: to do what you believe it's right to do. That's what these medals were earned for. That's why millions died.

A young lady from Burlington died; her funeral was on Monday. She died at 17 years of age—a very courageous young lady. The hundreds who attended her funeral heard her motto in life: It's not how long you live; it's how you live your life.

Every member of this justice policy committee has been given the opportunity to make a difference in Ontario and in Canada and do what is right. Say no: No more bills. Say yes: We have to ensure that our laws that have already been put in place to protect children are properly enforced before we try to pull more out of the woodwork. Let's put our energies into ensuring that our children are properly protected and that we're all doing the job we're supposed to do.

If there are any of my children in care, let me give them the opportunity to have a private visit with me so I can personally advocate for them on what they're going through. I call tell you that our audits show that the child advocate, the children's lawyer, Justice for Children and all those organizations—maybe it's not because of the want of doing the right, but they don't, and more and more children are being caused pain, unnecessary pain, that we are allowing them to go through. Thank you.

**The Chair:** Thank you, Ms. Marsden. The 15 minutes for your presentation have been used up. We thank you for your time.

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Chair:** The next presenter is the Psychiatric Patient Advocate Office: David Simpson, acting director. Good morning.

**Mr. David Simpson:** Good morning. Thank you, Mr. Chair and members of the committee. My name is David Simpson, and I'm the acting director of the Psychiatric Patient Advocate Office. I would like to thank the committee for its invitation and for the opportunity to comment on Bill 165.

The Psychiatric Patient Advocate Office is pleased that the government of Ontario is moving forward with their commitment to make the child advocate an independent officer of the Legislature.

Ontarians are at an important place in history, a place that requires them to critically examine their commitment

to independent advocacy, to protecting vulnerable populations and to enshrining in law the authority, function and responsibilities of an advocate who is empowered to protect the most vulnerable amongst us.

A progressive society has a responsibility and an ethical and moral obligation to protect those who cannot defend their own rights, who have no voice or who will be at risk because of their vulnerability. An advocate will be the voice of those who have no voice and will ensure that the voice of those who can speak for themselves will be heard. Advocacy done well improves both outcomes and quality of life: truly a benefit to the individual, their family and the community at large.

We want to applaud the government for moving forward in providing protection to vulnerable children and youth. However, we have some concerns with the proposed legislation and how it falls short in establishing the child advocate as a truly independent officer of the Legislature.

First, the definition of "advocacy" should be more broadly stated to ensure that it includes the ability of the advocate to pursue both legal and non-legal advocacy work. The definition should articulate the types of advocacy that will be provided to those who will seek service, including instructed and non-instructed advocacy, systemic advocacy, and supporting self-advocacy by children and youth. Legal advocacy work is essential if systemic change is to happen across the sector. There may be times when it's appropriate for the advocate to seek intervenor status in an inquest, in a case before a tribunal, such as the Human Rights Tribunal of Ontario, or before the Human Rights Commission as a way to promote systemic change. The advocate should not have their hands tied.

Second, the functions of the advocate as proposed in section 13 are too narrow and should be expanded to include providing advocacy and rights protection services to all children in Ontario seeking or receiving government services, not just those outlined in section 13. Let me repeat again that we must ensure that no child is left behind and therefore section 13 should be expanded to include providing advocacy and rights protection services to all children in Ontario seeking or receiving government services. By narrowing the functions of the advocate, some of the most vulnerable children will not be afforded the protection of the advocate. Parents and guardians should be able to utilize the services of the advocate, and the advocate, where appropriate, should be able to consider third party complaints.

Third, section 14 should be expanded to allow the child advocate the power to summon witnesses to provide testimony or to produce records. Although these powers would not be frequently utilized, they are necessary to ensure the co-operation of all parties. The advocate must have more than just moral authority or the power of persuasion. She must be given the authority to monitor and enforce compliance.

As an officer of the Legislature, the advocate should not have to "give reasonable notice," as proposed in

subsection 14(4), to the person in charge of the place that has custody or control of the child or youth should they wish to communicate with them or enter the place where they are residing. Such limits on the advocate's ability to do his or her job are both restrictive and unreasonable. The advocate should have free, immediate and unimpeded access to children and youth.

Subsection 14(6) should also be amended to grant the power of reconsideration to the advocate for children and youth who wish to appeal a decision by the advocate not to investigate their complaints. Additionally, timelines should be defined for any appeal or reconsideration process adopted by this committee.

Section 15 should be removed from the proposed legislation, as it will tie the hands of the advocate as an independent officer of the legislature. The advocate should not be required by law to advise the minister or the appropriate administrative head of the affected entity of his or her intention to conduct a systemic review, nor should the advocate be required by law to consult with the minister or administrative head before forming a final opinion on the subject matter of a systemic review.

Subsection 19(4) also requires the advocate to deliver a copy of the annual report or any other report to the minister of any ministry to which it is relevant at least 30 days before delivering it to the Speaker. All of these provisions unduly fetter the ability of the advocate to act independently and are at odds with both the intent and the purpose of Bill 165.

1140

We would also like to suggest that this bill be amended to include two other significant abilities. First, the advocate should have the authority to establish an advisory committee comprised of children, youth, families and service providers to offer advice and critique the work of the advocate. Second, the advocate should have the authority to establish any subcommittees or expert panels deemed necessary to address specific rights and entitlement issues faced by children and youth.

This bill is also silent on penalties for non-compliance for those who choose to violate the law or its intent. We submit that a section pertaining to penalties be added that is similar to section 27 of the Ombudsman Act. This section makes it an offence to wilfully obstruct, resist, make false statements or refuse to comply with a lawful requirement of the Ombudsman. These offences permit a fine of not more than \$500 or imprisonment for a term of not more than three months, or both. Without establishing penalties for non-compliance, children and youth may well be subject to continued abuse, neglect or rights violations, despite the work of the advocate.

Before concluding, I would like to say a few words about history and the roads less travelled.

In the mid-1990s, Ontario started down this road we are on today with the formation of the Ontario Advocacy Commission, which was, sadly, disbanded in 1996, before it could truly begin its work. We now have an opportunity to begin the broader discussion again. Perhaps the time has come to revisit the role of government in protecting its vulnerable citizens wherever they are.

In conclusion, the people of Ontario, through their elected representatives, must decide what type of advocacy they want for vulnerable people. Today our job is to create a mechanism to protect Ontario's vulnerable children and youth. Perhaps tomorrow we will be looking once more to developing a strategy for protecting all vulnerable populations.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Simpson. We have about one minute per party. We'll start with the PC Party this time.

**Mrs. Elliott:** Thank you very much for your comments, Mr. Simpson. I totally agree with you that to have a truly meaningful child advocate, the abilities need to be expanded beyond the scope of what's presently provided for.

In the interests of time, I just had one question with respect to expanding the definition of "advocacy" to legal, and non-legal functions. My question is how that interacts with the Office of the Children's Lawyer and whether you've examined that as to the roles that they would play if the children's advocate were to expand into legal advocacy per se.

**Mr. Simpson:** When I was talking legal advocacy there, I was thinking more about doing work around legislation, policy, intervening in inquests or before tribunals, to really put forward the position of all children and youth in Ontario, not just that one particular case. It's not clear to me from this bill if in fact those things will be allowed under Bill 165. So I guess we're saying that there's a role for both legal and non-legal advocacy and that the child advocate's hands should not be tied; they should be able to use the tools necessary to do the job that they need to do.

**Mrs. Elliott:** Thank you. I was just wondering, Mr. Chair, if it would be possible for Mr. Fenson, if he wouldn't mind, to give us some information with respect to the work that is presently done by the Office of the Children's Lawyer so that we can sort of take a look at what could be expanded into in terms of legal advocacy by the child advocate.

**The Chair:** Thank you, Mrs. Elliott. We'll move on to the NDP.

**Ms. Horwath:** I too appreciate your comments. I think you've made some excellent suggestions on improvements to the bill. I'm glad you raised the issue of the 30 days that ministers have to hold onto a report before it gets released. In my first attempt at debating this in second reading, I called it the government spin cycle, the 30 days that they have between the time they have the report and it becomes public. I think it's inappropriate. No other officer of the Legislature has that requirement, that 30 days be given to any ministry where there's a report that's about to be brought forward to the public. So I don't think it belongs here and I'm glad you've indicated that in writing. I want to thank you for that, because I think it's an important issue. We need to make sure that there is true independence of the child advocate and that it's not reduced by this 30-day opportunity for

the government to alter or in some way change the perception of what's being presented in an independent report.

Mr. Chair, on the very last page of the presentation there is a remark about the office of the child advocate having the lowest budget per capita in Canada. Can I just ask that Mr. Fenson as well give us the comparator of the per capita expenditures across the country in child advocate offices? I'd appreciate that.

**The Chair:** Okay, thank you.

We'll move on to the Liberal Party. Any questions?

**Mrs. Van Bommel:** Thank you very much for your presentation. In your recommendations you talk about permitting parents and guardians to utilize the services of the advocate. Could you expand quickly on what you mean by that?

**Mr. Simpson:** Sure. You'll notice that we also recommended the ability to take third party complaints. You may have children and youth in a group home setting where an older child sees that a younger child is being abused or that something is happening that's not quite right. There is no mechanism in this bill to say that the child advocate can in fact accept a third party complaint and, likewise, if you were to follow our recommendation, that all children in Ontario seeking or receiving government services could utilize the services of the child advocate office. That could mean that some very young children may need a parent or guardian to be their voice to make that initial contact with the child advocate's office so that an investigation or a review could be conducted.

**The Chair:** Thank you, Mr. Simpson, for your presentation today.

#### CHILDREN'S MENTAL HEALTH ONTARIO OFFICE OF CHILD AND FAMILY SERVICE ADVOCACY

**The Chair:** We will move on to our next presenters, Children's Mental Health Ontario and the Office of Child and Family Service Advocacy: Cathy Dyer and Irwin Elman.

**Ms. Cathy Dyer:** Good morning.

**The Chair:** Good morning.

**Ms. Dyer:** Thank you for giving us the time to speak with you today.

I guess I will begin with locating myself as to why it is that I wanted to speak to the committee. I grew up in foster care. I became a ward of the children's aid in Guelph when I was 14, and I spent the rest of my teenage years and my young adult life trying to do advocacy and organizing of youth in care. One of the things that I got involved in was working with Judy Finlay at the advocacy office, and I wanted to share with you just a brief story and highlight why it is so important that young people participate in the work of the advocacy office, why it's important that the advocacy office works with youth and not just for youth.

The story that is most impactful about my experience working on their youth advisory committee was at the inquest into the death of William Edgar, a young man who died in a group home in Peterborough. If memory serves me right, the advocacy office was able to get intervenor status, and the youth advisory committee worked together to sit through the inquest and listen to the testimony. Not only did a young person testify, but we provided recommendations to the jury to make improvements so that a death like this wouldn't occur again.

It was really impactful for me to participate in that experience because I felt that my time in foster care wasn't just a deficit; it wasn't something that was going to decrease my ability to have a successful life; it was a real expertise and it was valuable, and I could use that to help other young people and other professionals understand the system as it is experienced by young people. I also felt that my experience in foster care was positive: I had two loving foster homes. But that's the luck of the draw, really, and I often think about what my life would be like if I had lived in a different context, in a group home that was underfunded and under-resourced and overstressed. I really think it's important to have young people who have this experiential expertise help in providing the insight that the professionals need into the system and in providing that kind of context.

So Irwin and I have put together some recommendations, but he's going to speak a little bit before we go into those recommendations.

1150

**Mr. Irwin Elman:** Thank you for having me here, and thank you to Anne and Kevin for the work they did in helping some young people present.

I have been the manager of the Pape Adolescent Resource Centre in Toronto, which is a Catholic children's aid and Metro children's aid program helping young people live on their own. Probably, over the last 23 years or so, I've met and worked with 5,000 to 8,000 young people in and from child welfare care and various other systems.

It's an honour to be presenting with my colleague Cathy, whom I've known for many years, and it has been an honour to work with the Office of Child and Family Service Advocacy, where I'm seconded now, to try to help find ways of involving young people in all aspects of the office's work, not just on a piecemeal basis.

Some of my remarks are going to be a little less sober than maybe what is in the written submission we've made, but it's because it's really important. People have talked about the right to be heard—article 12 in the UN convention. My understanding is that it's actually the right to participate, and there's a distinction between being heard and participating. I think it's really crucial for this committee to understand that it's not just about being heard; it's about having young people participate in their own lives, in their own advocacy. It's something that's missing in the bill—certainly something that's missing in these consultations and hearings.

Youth in care in any of the systems we're talking about have gotten to those systems often through a lack of control over their lives. Nobody asks to be abused or neglected. It's not something children choose. And then, once they're in the system, the young people live in a system—in all the systems we're talking about—with a lack of control. They move from worker to worker, home to home. Certainly in custody there's not a lot of control in any of the systems. It's not surprising that outcomes for young people in care are not very good, given that.

However, what I want to say is that none of the 5,000 to 8,000 young people I've met are voiceless—none. It's not true to say that we have to speak for young people. We have to give young people the opportunity and support to speak for themselves. I see you nodding, Lisa. I know that as a parent, you know that. I know that as a community worker, Andrea, you know that. There's a health care professional here. There's enough information about social inclusion now—it's a buzzword—that shows it affects health. People in health know that. Educators were here. I know Rosario used to be a teacher. He knows that in education; all the theory knows that. Yet it's absent from this bill about how this advocacy office is going to involve the people who need to be involved the most because it's crucial in terms of them regaining control over their lives. Advocacy is a way of regaining control. The advocate's office cannot advocate without young people.

Somebody said that there has been meaningful participation of children and youth in the drafting of this bill. There hasn't been; let's not pretend. I don't think that means we go backwards, but I think we start from there. So knowing that and understanding that, what do you do about it? We've made some recommendations about how to strengthen the bill so that it doesn't happen again. The exemplar of how to involve young people in their own lives, in their own advocacy, becomes the advocacy office. It has to be. If it's not the advocacy office, there will be no other group or organization for young people of Ontario, adults of Ontario, for this Legislature to look toward how you do this.

One of them has to be in a purpose statement about the intent of the office to be judged, at least to a certain extent, and one piece of judgment about how it involves young people. It should be part of every report, and that's another recommendation. Every report the office produces should indicate how young people were involved. Whether it's the annual report or research or policy suggestions, every report should indicate how young people were involved in the development of those policies. The office should try to hold itself to a standard of being an exemplar in that sense.

I'm going to stop there. I don't know if there are questions. I just want to say how important it is for you to consider how to take some of the comments Cathy and I have made and make them come to life in the bill, because if you don't, that office will be severely hampered. It has been hampered—I'm going to say this—by the start you've given it, by how it has been created, by

how young people have been consulted. You've missed an opportunity, but you need not make that the legacy of your bill. You can change that now so that, moving forward, the office has a chance to be something distinct that exists in other parts of the world but not here in Ontario.

**The Chair:** Thank you. We have about one minute per party. We'll start with Ms. Horwath.

**Ms. Horwath:** Thanks, Irwin. You talked about your written submission. I don't have it. We're going to get it? Okay. That's good. That's important.

I want to say that I appreciate the work you do. You mentioned my own experience as a community development worker, and I've talked to you about that as well. I think it's so, so important that the comments you've raised were raised. A lot of the time we go about our business here in a very structured, very strict kind of way. During the process even of setting up these committee hearings, I tried many times to get people off the normal, adult-focused legislative process to get some other kinds of voices at the table in a way that is most facilitative for them. Obviously, that wasn't successful. But I agree with you: That doesn't mean we have to stop here. That means we need to recommit, and the way we recommit is by building those commitments into the bill.

I thank you for that. I look forward to seeing some actual amendments that we could probably use to make that happen. Thank you for your good work.

**The Chair:** The Liberal Party: Are there any questions?

**Mrs. Van Bommel:** Thank you very much. It's certainly a lot to think about. At this point we don't have any real questions; we're just taking it all in. Thank you very much.

**The Chair:** We'll go to the PC Party.

**Ms. MacLeod:** It's a pleasure to see you again, Irwin and Cathy, and thanks for presenting here today. I want to congratulate you for being such a positive example here today and telling the committee a little about your experience and how positive the child advocate has been in your position.

This is a bit of a full circle this morning, because we started off with Les Horne and Judy Finlay and we were talking about how—at least I was talking about it—around this table we could make this a more child-friendly and youth-friendly process, because to date it has not been. I really appreciated your mentioning that we need a preamble about the intent of the office, and also the inclusion of children and youth, whether it's through reports or at various stages. I wonder if either or both of you could just expound upon how you feel we could include youth in this process, from today moving forward, as we look toward putting this bill through the Legislature, passing it, and how we continue to encourage this to be a process for youth, by youth.

**The Chair:** Thank you for that comment and thank you for your presentation this morning.

## MICHAEL COCHRANE

**The Chair:** We move on to our next presenter, Michael Cochrane.

**Mr. Michael Cochrane:** Thank you. My presentation is being handed out right now; while it's being passed around, I'll tell you why I've come. I'm a lawyer in private practice in Toronto. I do civil litigation, with an emphasis on family law, very high-conflict family law, estates, and some public policy.

Over the last few years, I've been involved in dealing with some of the human wreckage that comes about from perhaps not having something like a children's advocate in place. In particular, I was involved with several hundred students who went to the schools for the deaf in Ontario. I don't know if any of you are aware of it, but the Ontario government paid out about \$8 million in compensation to deaf students who were physically and sexually abused in the schools for the deaf. I was also involved with the claims against the Robarts School in London, Ontario—again, deaf children sexually abused by teachers.

Another project I was involved with that seems completely unrelated to those things, but you'll see in a moment why it is related—I was the chair of the task force in Ontario that designed the Environmental Bill of Rights. One of the things that was built into the Environmental Bill of Rights was the Environmental Commissioner's office. I would urge you to look to the Environmental Commissioner's office as a model for the way in which the children's advocate is structured. The Environmental Commissioner is the linchpin for the way in which the Environmental Bill of Rights is implemented in Ontario. That office—Gord Miller, right now—watches over the way in which environmental rights are protected and has acted very much like a pitchfork in the rear ends of government and other people who would abuse Ontario's natural environment.

## 1200

I mention those only because, if it were up to me, the children's advocate office would be a part of a children's bill of rights for Ontario and the office would be watching over the implementation of that bill of rights. But on its own, it's terrific that an advocate's office is going to be created.

On page 2 of my presentation, I've set out some observations that I think might improve this office. You've already heard repeatedly about the need to make this more than simply an advocacy job—to let this become an investigative body. The recommendations I've set out are:

(1) Give this person the tools to do the job. Let them investigate. Give them the ability to enter premises and facilities, if needed in an emergency.

(2) Give them the right to access documents.

(3) Give them the right to have direct contact with young people, which you've already heard urged by others.

(4) Specifically authorize this office to be proactive. They should not be complaint-driven like an Ombuds-

man, where they sit back and wait for people to come with problems. They should go out and be proactively investigative.

(5) Be explicit in the powers this person has at their disposal, because I'll tell you, in many cases the advocate is going to be up against institutions, and institutions have lawyers. The lawyers will say that anything that's vague means the children's advocate can't do the job. So if you have a chance to be specific in the authority you give to this person, do so. That's what we did with the Environmental Commissioner's office: We made the authority that that office had quite specific.

(6) If the advocate is supposed to look into issues around children with special needs or with education—that's something else that was spoken to this morning—then I would say that. Don't let anybody give the advocate a hard time about it not being referenced in the legislation. Be over-inclusive, if anything. I would love to have somebody say someday, "Gee, the children's advocate went too far," "Gee, they were too aggressive in investigating something," or "Boy, they really protected too many children." I don't think you're going to find that. I think you're going to find that they have their work cut out for them. But there's no reason to not be over-inclusive in the responsibilities you give to them.

(7) Authorize this office to make special reports to the Legislature, the same way the Environmental Commissioner does on emergency issues that come up.

(8) Make sure you give this person an adequate budget. The Environmental Commissioner's office right now works with a budget of about \$2 million a year. That is a bargain in this province for the work that office does. I would say, you could expect to be doubling that budget for the children's advocate.

(9) I would also go so far as to give the children's advocate what I would call an emergency remediation fund. The example I mentioned in item 9 on page 3 is that when the Cree First Nations up near James Bay had their water contaminated and children up there suffered from some pretty horrific infections, rashes and, in some cases hepatitis A, it was the impact on the children that got everyone's attention. If that had happened in a southern Ontario city, this would have never been tolerated for a split second. But because it was up north, it took a long time for people to respond, and I think the response came because of pictures of children in the news with rashes and sores all over their bodies. They spent \$16 million to move that community over the last year and a bit. That's the kind of thing that I hope the children's advocate would be rolling up their sleeves to get involved in. When something nightmarish like that occurs, the advocate is on the spot and maybe has some money available to them to actually do some on-the-spot remediation on a temporary basis.

(10) This is the most important point I want to make. Last week, Cathy Crowe, who's a street nurse in Toronto, released her book *Dying For a Home*. It's about homelessness, primarily in Toronto. I hope it doesn't come as a surprise to you that there are about 3,700 people in

Toronto—men, women and children—who use the emergency shelter system, which includes cots, bunks and motel rooms. There are children in that system, and I would hope that the children's advocate would, in an investigative capacity, be going out and looking at that terrible tragedy and also recognize that the lack of affordable housing is one of the main reasons Ontario children go into the children's aid system. I wish Cathy Crowe herself could be here to tell you, but I would urge you to read her book *Dying for a Home*.

(11) On some other related points about the family law system, it's pretty much in a crisis mode right now in Ontario. It's a mess. Everything is totally delayed. The level of acrimony is awful. I think the part of it that I find most frustrating is that we see families blowing the equity in their homes, burning up their RSPs, cashing them in, to pay lawyers to fight in the justice system. The CAS is often dragged into cases. I would be shocked if the children's advocate didn't have to do an investigation of the family law justice system in this province, because it is certainly not helping families and it's certainly not helping children. We see it every day.

(12) In this point, I mention the Office of the Children's Lawyer. Again, as with the Environmental Commissioner's office, what a bargain we get for the work that those people do, just baling all the time for children in the justice system. That office needs more funding. If ideally some day it was pulled under the auspices of a children's advocate and they had the representation function for children, that would probably be fantastic. They are completely under-resourced right now.

(13) I mention that I think consideration should still be given to the idea of a children's bill of rights for the province. Right now, citizens in this province are better equipped to act to protect the environment than they are to protect children. I would urge you to take a look at the Environmental Bill of Rights, where citizens can trigger investigations; they can ask the Environmental Commissioner to launch a probe into a ministry to get the ministry working on something.

(14) The last point: I read some submissions that were made by Defence for Children International—Canada, and I support all their recommendations, in particular the recommendations that would turn this office into something more investigative rather than a report-writer. The last thing we need in Ontario is somebody to just write reports. We've got lots of those. We need somebody to actually go out there and be a pitchfork in someone's behind for the benefit of children.

Those are my comments. Thank you.

**The Chair:** Thank you, Mr. Cochrane. We have about a minute and a half per party. We'll start with the Liberal Party, if they have any questions or comments.

**Mrs. Van Bommel:** Thank you very much for your presentation—certainly a number of issues. Your perspective on the idea of the commissioner, like we have an Environmental Commissioner, is very valuable. Thank you very much.

**The Chair:** We'll go to the Progressive Conservatives.

**Ms. MacLeod:** I just want to say that that was a brilliant presentation. I thought it was excellent, and I think I speak for all my colleagues. You brought so many points to the table today, and I really want to congratulate you for that. You've done an excellent job of going through the legislation and talking to us about the bill before us this morning. I look forward to speaking to you further on some of these issues.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I too want to thank you, Mr. Cochrane. I have one question. In item 6, you say, "Be explicit and over-inclusive." Did you want to expand upon that a bit?

**Mr. Cochrane:** I noticed in the submission from that organization I mentioned in the last point that there was some debate about whether children with special needs would benefit from investigations by this children's advocate. I didn't see any reference to it in the mandate. I used to work for the Ministry of the Attorney General as a policy adviser. I did the Family Law Act in Ontario. I know what it's like, saying, "We'll just put it in the regulations." Don't do that. Put it right in the act. If it's special-needs, put it in the act. If it's education, put it in the act. Then someone's going to do something. Regulations just get lost.

**The Chair:** Thank you for your presentation, Mr. Cochrane.

## TORONTO PARENT NETWORK

**The Chair:** Our final presentation this morning is the Toronto Parent Network: Cassie Bell. Thank you for your patience.

**Ms. Cassie Bell:** I'm not going to keep you long. My parking meter is about to expire, and I'll get a ticket. I'll hand this to you at the end, but I only have one copy.

It's a pleasure to be here. I would like to start by saying: Please do everything Mr. Cochrane advised you to do, because I really thought that was brilliant. He nailed everything on the head. I also thought his advocacy around the children's bill of rights—from what I've heard very recently, from the previous deputations, if you really want to get children involved, that's your way. You could actually have children and youth develop a children's bill of rights. I think that's brilliant. It also touches on that recommendation that you had to get children not just heard but participating, which is so important.

1210

I'm with the Toronto Parent Network. We are literally a network—e-mail and phone and contact of about 1,500 to 2,000 parents across the city of Toronto. We've been active for nearly 10 years. It is volunteer.

I'm here today to speak to this act. I strongly, strongly support it. I would like to remind you of somebody whom I never forget. His name is Tyler. He was 18 years old when he took his own life. Tyler was a student in the public school system. Tyler was in an alternative program, and he had a youth counsellor. When the previous government was in power there was a great struggle over

education and there were many cuts made at the Toronto board, one of which was youth counsellors, never to be reinstated. Tyler lost his youth counsellor in April. He was severely troubled and no doubt suffering mental health issues, which one in five of our children and youth in Ontario today suffer—often undiagnosed, I might add. The cut was made reprehensibly and unprofessionally. The youth counsellor lost his job. Tyler lost his advocate. Although I can't draw a direct link, I did attend that funeral, and I will never forget it. So I ask you not to forget Tyler when you are enacting this bill. Why? Because this office has an opportunity to expand. I know public officials hate to hear, "Please expand your mandate," but that's exactly what I'm recommending. I think, as Mr. Cochrane recommended, that you should look at the jurisdiction of education, including special needs and ESL and everything that education encompasses. Our ESL children and youth have no voice because—guess what?—they don't speak the language. Special-needs young children and youth are, by definition, in need of assistance in finding their way, and it often is a labyrinth.

An End to Violence Against Children, the 2006 UN report, recommends exactly what you are hoping to achieve. Government should consider establishing a commissioner's officer for children's rights complying with the Paris Principles and working closely with other agencies concerned with public health and child protection issues. These independent institutions should have a clear mandate to monitor children's rights at a national, regional and local level. Where appropriate, they should have the competence to receive and investigate complaints, which speaks to the proactivity that Mr. Cochrane touched on, about violation of children's rights from the public, including from children themselves. If you do this, this will be a huge step forward. This is something that Ontario, in fact Canada, needs.

The advocate's office must, in my opinion:

- Be established beyond political interference. In other words, once you've carefully and thoroughly investigated and established the commissioner's office, you step back.

- Be an independent office accountable to the citizens of Ontario through the Legislature and not through a ministry.

- Provide annual reports. I think that's every bit as important as being proactive because it will highlight systemic issues, which are publicly available and highlighted.

- Be provided with sufficient resources, financial and human, to increase the awareness, the profile, and the accessibility of the office. In other words, if people don't know you're there, then you're not very efficient.

- Allow for comprehensive consultations and investigative processes to occur—that is, in the building of the office—and that's very important. They should be proactive. They should be those pitchforks.

- Expand its mandate to include children and youth within all public institutions, including public schools, in order to provide universal protection and voice.

—Finally, always remember Tyler and the thousands of other children and youth whose voices are not heard within our public institutions in spite of existing policies and processes.

Thank you.

**The Chair:** Thank you, Ms. Bell. We'll see if there are any questions, starting with the PC Party.

**Ms. MacLeod:** I appreciated your deputation. I think the only thing that needs to be reiterated again and again for the government is that we need to expand the mandate. You succinctly did that, so thank you.

**The Chair:** Thank you. Ms. Horwath?

**Ms. Horwath:** I don't have any questions either—I know you're anxious about your car—but I want to say thank you. Parent activism is so extremely important in getting things right. Certainly, having the voices of children at the table is extremely important as well, but parents become the pitchforks as well, so thank you for being a pitchfork.

**The Chair:** Thank you. Finally, Ms. Van Bommel.

**Mrs. Van Bommel:** I see you sitting on the edge of your chair, Ms. Bell, ready to get out there to your vehicle. I thank you very much for reinforcing the previous presenter's points as well. Thank you.

**The Chair:** Thank you again, Ms. Bell.

Members of committee, we now stand recessed until after routine proceedings or 3:30, whichever comes first. Please take your materials with you, because we will be meeting in room 151 downstairs, so don't leave anything behind. We're recessed until that time. Thank you.

*The committee recessed from 1217 to 1602 and resumed in room 151.*

## ASL SERVICES FOR DEAF CHILDREN IN ONTARIO

**The Chair:** I'd like to call back to order the standing committee on justice policy and continue our deputations from this morning.

Our next deputation listed is Chris Kenopic, ASL Services for Deaf Children in Ontario. Good afternoon, and welcome.

**Mr. Chris Kenopic (Interpretation):** My understanding is that I have up to 20 minutes, which includes questions and answers. Is that correct?

**The Chair:** It's 15 minutes.

**Mr. Kenopic (Interpretation):** Okay. Who will give me the signal when there are five minutes left?

**The Chair:** If you want to, I can give you that signal.

**Mr. Kenopic (Interpretation):** Sure. If you could do that, that would help me greatly. Thank you.

**The Chair:** When there are five minutes left? Sure, okay.

**Mr. Kenopic (Interpretation):** First of all, I'd like to thank you for giving me this opportunity to address Bill 165. I grew up as a deaf individual, and I have a son who's four years old, who is also deaf. He goes to a YMCA program at a deaf school. Educational issues are something near and dear to my heart, and I've been

advocating for those issues for several years. But it gets to a point sometimes where it can be draining and the feeling to give up enters one's being. The fight has to continue, and one cannot give up. When my son was born and we found that he was deaf, I had to go back to square one after having decided I wasn't going to fight the cause anymore, so here I am again, fighting the cause.

I went to a school for the deaf in the 1970s and 1980s. At that time, education was in a sad state of affairs. Upon graduation, I found that my reading level was at the grade 4 level. Here I was, a bright student, but I had missed out on a good education. I went to Gallaudet University and felt overwhelmed. The reading and writing that were required seemed to be above my head, and I feared that I might fail. But I had both teachers who were deaf and teachers who were hearing, who encouraged me to improve my literacy, to read and to write. That helped me immensely. If it hadn't been for them, I don't think I would be here today in the capacity that I am, so heartfelt thanks to them.

Unfortunately, there are many issues dealing with students who are deaf and hard of hearing, many barriers to the educational system, to acquiring a good education. Some of these barriers include teachers of the deaf who are not skilled in American Sign Language, educational assistants who do not have the required skills to deal with children who are deaf. The teachers themselves don't fully understand ASL, American Sign Language, as a language and how to use it in the educational setting. Many individuals see that ASL is just used for communication and some feel that it's not even a true language, whereas the inverse is the reality.

Now, I've been involved for many years on educational committees under the NDP, the Liberals and the Conservatives, and I've worked on many committees involved with these issues so I come here well versed. But I must say that through these many years, nothing has improved greatly, and there needs to be improvement.

I've also been involved with students who have laid human rights complaints about access in the educational setting. I've also represented many parents who became frustrated with the school boards and with the process in school boards and schools for the deaf. They wanted a better education for their child, and they wanted greater accommodations and access—many issues that led to barriers that needed to be resolved and still do.

The Office of Child and Family Service Advocacy: I have worked with them many years, and I'm glad to see Mr. Anselmo Desousa here from that office. I have worked with him over the years in a variety of capacities that have included parents and students alike. What I've seen is that the staff from the advocacy office have good hearts and well-meant intentions, and they try to do what they need to do but their hands are tied. There are weaknesses that prevent them from doing what they need to do for the betterment of the child. Judy Finlay I know quite well; we have corresponded over the years on these issues.

You may recall that Bill 4 was passed a while ago, in 1989. Since then, not one government regulation has been introduced, either under the NDP or the provincial Conservatives or the Liberal government. It has been several years. Again, the government has been reminded and reminded and reminded. These regulations would break down the barriers that are faced currently by students who are deaf and hard of hearing. The Office of Child and Family Service Advocacy is trying to move things along. Provincial schools for the deaf and school boards always raise the issue, "Well, it's a capacity issue," but I don't understand really what the issue is there. After 18 years, we haven't been able to come up with one regulation or a list of regulations? We have the resources; we have the advocacy office. There needs to be something in place that will enforce these regulations to be enacted. We need the regulations to move things along.

Recommendations for Bill 165: Bill 165 needs to identify the students for whom they advocate. Bill 165 doesn't clearly identify who those students are. Bill 165 should state clearly how it will advocate for deaf and hard-of-hearing students within the provincial schools for the deaf and school boards across Ontario. It should include clear protocols on advocacy for students and mechanisms for addressing student complaints.

#### 1610

The Office of Child and Family Service Advocacy should be involved and should be looking at what the parents' and students' concerns and issues are to help strengthen the educational system for this target group.

It's also important to identify cultural needs and linguistic needs, language needs, American Sign Language and langue des signes québécoise and provide accommodations using these languages. That should be enshrined in Bill 165 so that it does become a responsibility, and thereby the school boards and provincial schools for the deaf should be held accountable for addressing these concerns.

Also, at the start of every school year, children in provincial schools and school boards should be given information that makes them aware of the advocacy office and of their rights. Many students do not know what their rights are, do not know of the Office of Child and Family Service Advocacy.

This morning I was at another meeting at one of the provincial schools. Two principals were in attendance. I asked them about Bill 165, and I have to say that they didn't really know much about this bill. I said that they should really be aware that I was coming to make a representation. I've sat in committees. This should be nothing new to them. Provincial directors and administrators are not necessarily in the loop, and it's up to other people to inform them. There needs to be someone who shares the information. There needs to be communication amongst all levels that are in the school system, and information needs to be shared, for sure.

A deaf child who is placed in a foster home or in a medical setting faces barriers. There should be protocols

established that ensure complete accessibility. A few years ago, my niece went to a school for the deaf. There were some issues that occurred and she was placed in a special setting. Her emotional behaviour worsened because accommodations were not in place. Her ability to communicate was limited. They said, "Sorry, we can only provide an interpreter between this hour and this hour." It was quite limited. I propose that interpreters should be provided 24 hours a day continuously until they're placed in an appropriate setting. The Office of Child and Family Service Advocacy and staff from that office, such as Mr. Desousa, are not able to do much because, as I said, their hands are tied.

I'd like to see the government deal with several departments and bills looking at these issues to ensure that there is an appropriate process that deals with all of these issues that I've dealt with. There needs to be follow-up and measurement to ensure that these things are happening.

Before I close, I would like to thank the committee. I just want to be very clear that I did not come here to convince or influence anyone. I'm not here to change anything. That's not my role. I'm here to give you a perspective on the issues that are faced, day in and day out over the years, by the people I've been talking about.

I feel that the advocacy office needs to have greater strength. The opportunity is before you. Keep the status quo or make the changes afforded under Bill 165. We need to give more power and more clout to the Office of Child and Family Service Advocacy so that they can go and ensure that those individuals are afforded the rights that they're entitled to. I thank you.

**The Chair:** Thank you, Mr. Kenopic. I was going to interrupt—you were winding up, though—when there was five minutes left. We're down to about three minutes left, so that leaves about one minute per party to ask a question. We'll start with the Progressive Conservatives.

**Ms. MacLeod:** Thank you very much, Mr. Kenopic. It was a great presentation. I truly appreciate your attending here today. I'm a little disappointed to have learned that you were speaking with one of your committees that will be affected by this piece of legislation today and they did not know anything about it. I think that, unfortunately, is where we're at today, that we did not communicate effectively as a committee and as a Legislative Assembly to the people who are going to be affected by this bill.

Earlier today we heard from numerous deputants who thought we should be more explicit in setting out the powers of the children's advocate, which I believe is what you're advocating here today—

**Mr. Kenopic (Interpretation):** That's correct.

**Ms. MacLeod:** —that we should be very clear with people. We need to enshrine this in the legislation. Whether it's children who are deaf or blind or if they're incarcerated or what have you, that has to be there. I wanted to thank you for reiterating that today and for taking the time to be with us. So thank you very much.

**Mr. Kenopic (Interpretation):** You're welcome.

**The Chair:** We'll move on to the NDP, Andrea Horwath.

**Ms. Horwath:** Thank you, Mr. Kenopic. It's important that you're here to talk to us about many of your concerns. It's interesting, though. Unlike the previous member, I actually think that the responsibility for ensuring that there is fulsome consultation prior to our even having draft legislation rests with the minister, and I think she failed miserably on many fronts—the front of your community as well as many, many fronts. I think that's a sad state of affairs. Nonetheless, we're working with the bill that's in front of us, and we need to move ahead.

I notice that you mention particularly your concern that regulations in the past that you thought should have eventually been developed in other legislation have never come to pass. Certainly you must know that the education piece is not in this bill as it is before us but is being talked about as being added in as a regulation in terms of putting education as part of the scope of the bill. I'm just wondering if you have any comment on that or if I'm correct in assuming that that's why you raised that issue in your remarks.

**Mr. Kenopic (Interpretation):** My point is that if we have regulations for the bill, then that will address the needs of deaf children in the school setting. Right now, there are no regulations that require educators to have skill in American Sign Language when teaching children who are deaf or hard of hearing; there are no regulations yet. Also, the qualifications of interpreters—some of the school boards have "interpreters" they've hired and they're not really qualified, especially to work in an educational setting, but they're hiring these people as interpreters. If regulations were in place, then the advocacy office could pursue that and deal with it further, but they need regulations in place. So if those regulations were in place, they could better represent the students they're advocating for.

**Ms. Horwath:** Thank you.

**The Chair:** We'll move on to the Liberals. Mrs. Van Bommel.

**Mrs. Van Bommel:** Thank you very much for your presentation. You talked about deaf children going into foster homes and foster care. Is there any requirement for accommodating deaf children when they go into these settings? Are the parents required to know sign language? How do these children get their communications across?

**Mr. Kenopic (Interpretation):** You raise a very good point. There really are no expectations. If a deaf child is placed in a foster home, the foster parents can't learn to communicate right off the bat, obviously. There need to be protocols in place that when a deaf child needs to be placed in an environment, an environment where sign language is used should be looked at. But sometimes it's not even looked at and they're just placed in a given foster program. If, however, there is not a foster home or foster placement where sign language can be used, then an interpreter needs to be brought into the foster home

where the foster parents don't know sign language. That interpreter would help facilitate communication. So my point is that they need to be placed in a proper setting with the proper accommodations.

**The Chair:** Thank you, Mr. Kenopic, for your presentation today.

1620

#### SANDRA TANNY

**The Chair:** We will move on now to our next presentation: Sandra Tanny. Good afternoon, and welcome to committee.

**Ms. Sandra Tanny:** Thank you for giving me the opportunity—sorry. Okay. Now?

**The Chair:** Everything that you're saying is being recorded by Hansard, so they want to pick up every word.

**Ms. MacLeod:** Scary.

**Ms. Tanny:** Is that okay?

**The Chair:** Yes, so talk as loud as you possibly can or put the microphone as close to yourself as you can.

**Ms. Tanny:** Okay. We'll try.

Thank you very much for giving me the opportunity to address the committee. I am a caseworker with Toronto Social Services. I am not speaking, though, on their behalf. I am here to address you on the experiences that I have had in Family Court and the experiences my daughter has had, and the disastrous results due to the fact that she did not have legal representation.

I will begin with a simple situation I encountered when I first started working for social services. It was with a single mom who had been in a shelter on three different occasions. I met her when she had left the matrimonial home for the fourth time. She had taken her daughter with her. Her daughter was 17 years old. The daughter had originally lived in a very nice house and did not want to live in one-room accommodation—she wanted to be together with her friends. Even though she was in a very abusive situation, the daughter was not sure whether she wanted to remain with the mother or not.

I did everything in our power to help the mother along until she managed to get to family court. She was hoping to get a support order that would allow her to get a better apartment, to have some money for her daughter who was 17 years old. Her daughter was not represented.

She got to family court, and the family court judge basically said that since social services was providing support, the issue of support was no longer of any immediate need. They spent the following few hours that this lady had worked so hard to fund discussing basically the contribution the husband's father had made to the purchase of the matrimonial home. Needless to say, my co-workers were disappointed; they were shocked. I was merely saddened, because that experience—my client's experience—resonated with the experience I had in family court and that my daughter had. None of that should have happened if she had had representation.

I would like to focus on what happens to children in family court when they are not represented in the hearings having to do with custody, support and division of property.

Basically, I'm a single mom since 1994. I have a daughter. My daughter's name is Erica. She is a university student. She is very capable. She has a 3.89 average, and she is a member of the swimming varsity team.

However, Erica is also disabled. She is currently in a wheelchair, but she does not let her medical condition get in the way. She is participating in swimming meets for the Paralympics and she is a strong advocate for children with special needs. When she graduates, she would like to go to law school.

Unfortunately, we live from paycheque to paycheque. My daughter's financial needs—I am supporting her completely. We spend one of our paycheques to pay for the rent; the other one, basically, to pay for physiotherapy that's not covered; for transportation, because Wheel-Trans often does not show up to take her to school on time for exams or to pick her up; and for wheelchair repairs that, unfortunately, are not being covered by the government.

But we have not always lived this way. Erica is what Family Court calls "a child of the marriage," namely that she was born within a marriage relationship and is entitled to all the protections under the Family Law Act of Ontario and the Divorce Act of Canada.

Erica was 12 years old when my ex-husband served us with papers indicating that he wanted a separation. At that point, I had been married for 23 years, and during the 23 years of marriage we had accumulated substantial assets. We had \$400,000 in Erica's name for her future education. We had a paid-for matrimonial home that is now worth \$700,000, \$800,000. We had a partnership in the United States that we set up when we lived there that was worth about \$1.5 million, and various other investments, my ex-husband's RRSPs and pension plan. Sorry—our partnership in the States was \$2.5 million. He had pension plans and so on worth over \$1.5 million. To date, 13 years later, neither Erica nor I have had access to any of these funds, and neither she nor I gets any kind of financial support, even though we have been in family court for 13 years.

I guess that prior to the separation, my husband had transferred all of our joint assets into his name, and Erica's assets, so it left me with no means to pursue my rights or Erica's rights in family court. I tried to get in touch with legal aid. They would not fund me because I was working part-time at the time. Eventually, I managed to get an inexpensive, beginning lawyer, and she managed to get us \$1,500 in support per month, based basically on the difference in salary between my ex-husband and me, with no consideration of the substantial assets. Based on substantial medical evidence, I also got sole custody of my daughter. We have never made a claim for abuse because we didn't want that to be dragged through court. I was given sole custody of my daughter, but I was not given any financial means with which to represent her and represent her needs.

During the following 12 years, the past 13 years, I incurred over \$100,000 in debt in legal fees and court costs when I tried to resolve issues having to do with Erica's education and support. During this whole time, I have been singularly unsuccessful. When I tried to argue on Erica's behalf, the judges did not see Erica. They did not see her. Had she been present there in body and spirit and mind, and with a lawyer, they would not have made some of the decisions they made.

I was told during all these court hearings that even though Erica was a child of the marriage and she was being affected by decisions having to do with support, she was not a party to the proceedings, so as such, she did not have any standing in court. It was up to me to represent her, but at the same time, I didn't have the funds to do that.

Mr. Jarvis from Beard Winter was our second lawyer. He really should have worked mostly on division of property, but an issue in regard to Erica's education came up. Prior to our separation, Erica had been going to a Jewish private school system. She was doing very well. After the separation, my ex-husband cancelled all the cheques that he had issued to the school. So Mr. Jarvis argued on Erica's behalf that she had special needs and that there were funds available to fund her education, and we won that hearing. It was a very expensive hearing.

It went to appeal. My husband took it to appeal. We won the appeal; again, money spent that really should have been spent, by a lawyer representing Erica. Unfortunately, we ran out of money, and we tried after that to function through case conferences, but as you know, in case conferences a judge cannot make an order. It's basically a negotiation session. When one of the parties, such as my husband, had all the assets and I had none, there was no reason for him to negotiate. Why should he negotiate when he can have it all by basically striking my hearings or just hanging in there?

1630

Once again, in subsequent hearings, I tried to raise issues with regard to Erica, but I was told again that she was not party to the proceedings. So my ex-husband realized that the easiest way to sort of knock us out of the game was by simply multiplying the proceedings. He started a case in the United States in regard to Erica's money and in regard to our joint money, and since I could not afford a lawyer in the States—he knew Erica and I could not afford a lawyer in the States—he basically got a summary judgment declaring that all the money was his.

He started proceedings in the Jewish court, and those are proceedings where one does not need a lawyer. Given the whole issue with Erica's education, which was not being funded, I had asked the rabbis to work out something before we proceeded to this Jewish divorce, which incidentally was of no great necessity for either of us because my ex-husband was involved with and eventually married a lady who was of Catholic beliefs, and in that situation one does not need a religious divorce. In my case, it was not necessary because I wasn't getting married. So all in all, it was a red herring.

During the negotiations that the rabbis were trying to conduct, my ex-husband appeared in Family Court before Judge Walsh. At the time, I did not have a lawyer. I went by myself. I asked Judge Walsh for time to try to get a lawyer through legal aid. He said no. I told him that I need help to represent my daughter and my daughter's interests. He said no, and he basically struck all my pleadings. He basically said that the support order was null and void and the custody order, which had to do with Erica's safety, was null and void based on the fact that I had "refused to give my ex-husband a Jewish divorce." That refers to section 21 of the Divorce Act.

Had my daughter's lawyer been there, I'm quite sure that Judge Walsh would not have made that decision, because, on balance, if you balance the rights of the father to date in his religion, which in fact was not the case, but even assuming that it was, I guess the needs of the child for support for basic things such as food, shelter and education—

**The Chair:** Ms. Tanny, you have one minute left. If you can just wrap up your presentation, I'd appreciate that. Thank you.

**Ms. Tanny:** Sure—he would not have done that. So basically what I would like to argue is that whenever you have a huge discrepancy in funding and assets, and when it comes to family law and most support orders are obtained through Family Court, then the children need to be represented. They need to have someone to represent them, because it often becomes the responsibility of the mother, who has no assets to represent herself and her needs and also advocate on behalf of the child.

That's my presentation.

**The Chair:** Thank you for your presentation, and thank you for taking the time to come here today.

## LAWRENCE KONG

**The Chair:** Members of the committee, our next presenter is Lawrence Kong. This is a teleconference presentation. So we'll just ask if Mr. Kong is there.

**Mr. Lawrence Kong:** Hello? Members of the committee?

**The Chair:** This is the Chairman, Lorenzo Berardinetti. Welcome to our committee. You have 15 minutes to address the committee. Any time that you don't use can be used by the three parties to ask you questions.

**Mr. Kong:** Thank you, and thank you, members of the committee, for having me here.

The Child and Family Services Act was originally designed supposedly to ensure that in cases where it is unsuitable to have a child left at home, in cases where the parents are considered unsuitable, the child will be placed under government care. Unfortunately, it has come to my attention—I believe that in the majority of cases the children's aid society deals with it is in fact in the best interests of the child to keep the child in his natural home with his natural parents. Many of these cases are ones where the child is, unfortunately, snatched out of the home for malicious, trivial or political reasons.

I think it should be self-evident that those best suited to and most eager to provide for and love a child are his own mother and father. The system needs to be reformed with this principle in mind. It should be doctrine both in law and in practice that this is the rule rather than the exception. So I would urge that the committee make decisions regarding this bill, the Child and Family Services Act, and family law with the true interests of the child rather than the Family Court industry in mind.

I would also comfortably state that in the majority of cases there is no reason for the child to be in the custody of government workers, for even if the natural parents were truly unfit, surely there is an uncle or an aunt or grandparents who would be a better choice.

With regard to the bill in question, what we need first is to remove the children's aid society's immunity from scrutiny by the Ombudsman of Ontario. I would see that as being a necessary first step towards accountability.

Arguably, one of the greatest threats to families nowadays is the existence of these children's aid societies that are accountable to no one. The fear often provides a great disincentive as well for potential parents to bring more children into this world, knowing that they could easily be taken away from them. Unfortunately, the children's aid society and the Family Court act without the due process afforded by criminal law. In criminal law, we act under the premise, first, that those accused are innocent until proven guilty, and that they have the right to a fair hearing. Unfortunately, that's not the case with family law. The children are taken away first and then the parents have to, on their own dime, appeal that. This tearing apart of families is unnatural and unhealthy for the children as well as for society. Arguably, there is a great correlation between those who graduate from the foster care system or who have experience in the foster care system and a future tendency, say, towards criminal and deviant behaviour.

1640

In conclusion, I would urge that the committee keep these facts in mind when deciding on any issues to do with family law or the CFSA. I would also urge that the committee look into one website, [www.fixcas.com](http://www.fixcas.com), which I have found very useful in researching this issue, to which I am admittedly new. That is the website for VOCA, which I'm not actually a member of. It's the Dufferin Voices of Children Alliance, a group that is dedicated to reforming the children's aid society. As well, [www.canadacourtwatch.com](http://www.canadacourtwatch.com) has also been very instrumental.

Thank you for your time.

**The Chair:** Thank you, Mr. Kong. There could be some questions from the committee. There are approximately eight minutes left, so just under three minutes per party. We'll start with the NDP. Ms. Horwath may have some questions of you.

**Ms. Horwath:** Thank you, Mr. Kong, for your presentation. I want to thank you particularly for raising the issue of the need for Ombudsman oversight of children's aid societies. As you know, the government has already

decided not to do that, under harsh criticism from myself—my name is Andrea Horwath, and I'm the critic for children and youth services for the NDP caucus. Certainly when they had the chance, they should have given the Ombudsman opportunity for oversight. In fact, for your information, the Ombudsman of Ontario has made a written presentation to this committee that concurs in your analysis.

**Mr. Kong:** Where is that?

**Ms. Horwath:** It was provided to us in writing; he hasn't spoken to us verbally. But I think you've hit the nail on the head in terms of the fact that this particular province is far behind. If they were committed to a real system of protecting children and making sure we are doing the right thing by children, the Ombudsman would be working hand in hand with the child advocate in making sure that the services provided for children were adequate and appropriate, and serving children in the right ways.

I want to thank you for bringing that forward and say to you that I agree wholeheartedly and think it's shameful that the province is at the end of the line, if you want to call it that, at the back of the pack in terms of Ombudsman oversight for children's aid societies.

**The Chair:** We'll move on to the Liberal Party. Are there any questions or comments?

**Mrs. Van Bommel:** I just want to thank you very much for your participation, Mr. Kong. We have no questions.

**The Chair:** We'll move on to the Conservative Party. Ms. MacLeod.

**Ms. MacLeod:** Thank you very much, Mr. Kong. We certainly appreciate your presentation today. We appreciate, certainly on this side, your view bringing the Ombudsman into today's debate and the next couple of days. As Ms. Horwath indicated, he will not be presenting in front of us today, but has provided us with a presentation.

I think it's very important that we have access to as many people across Ontario as possible, and I'm certainly happy that you took the opportunity to teleconference with us today.

**The Chair:** Thank you, Mr. Kong.

#### YOUTH IN CARE, LONDON AND MIDDLESEX CHILDREN'S AID SOCIETY

**The Chair:** We'll move on to our next presentation, Youth in Care, London and Middlesex CAS. If there are people from that group who want to come forward.

Members of the committee, they will only be giving their first names. That's all you need to do. Please have a seat. If anybody wants some water, there's water there. Good afternoon.

**Kat:** Hi.

**The Chair:** Hi. All you have to give is your first name.

**Kat:** Okay. I'm Kat.

**The Chair:** Just relax. It's very informal. I'm just as nervous as you are.

**Ms. MacLeod:** Why don't we all relax.

**The Chair:** Yes, we'll take a deep breath.

**Paul:** I'm Paul.

**Erica:** I'm Erica.

**Mr. Zimmer:** I'm Dave.

**Mrs. Van Bommel:** I'm Maria.

**Mr. Qaadri:** I'm Shafiq.

**The Chair:** My name is Lorenzo.

**Ms. MacLeod:** I'm Lisa.

**Ms. Horwath:** Andrea.

**Erica:** We agree with Bill 165. We support it, because we want the advocate to have the freedom and authority to complete their job fully without interference, I guess, from the government as much as possible. We have a couple of suggestions, amendments, things to be added to the bill.

First, the act does not include some specific populations. Right now it's supposed to include children or youth who are accessing services provided by the government: children's aid societies, mental health and all that jazz. Basically, after Bill 165 goes through, as I'm sure you're aware, it's not including mental health, physical disabilities, and youth and children who are involved with the justice system whatsoever. We think it should include all youth, all children, regardless of who they are and what they're doing.

Also, as far as location, it's based out of Toronto right now. We want it to be able to have satellite agencies, so that if somebody has an issue up north or out west, wherever in the province, they have the ability to go in and not have to go through—it's an access issue, basically.

**Paul:** The other issue is age. Some kids, as soon as they turn 18, don't get any service from the advocate. I'm 19, so I don't get any service from anybody, from any of them. They get service from mental health and children's aid. Some kids are 21 right now—almost turning 21—and they need help. In their group, when they have a problem they can't really go to the office at all for any of their problems. Pretty much the only other place they can go for help is the police.

The other issue is that we want kids to have their input on the bill. I know how the bill was passed through with the adults. They had most of the input, not the kids having a say in selecting an advocate. So if we have one of our kids for the advocate instead of an adult, for youth to make more decisions and power and reporting to the Ontario government.

**Kat:** One of the biggest problems that I know I experienced was not knowing about my rights in general. It's not only me; I think a lot of kids need to be more informed. In Bill 165, there is no responsibility to have to enforce it and give kids knowledge of it, and I think that should be in place.

Also, making it positive—there's a negative stigma around it: "You're going to be punished if you call." That's not okay. I think that should be made positive just to help you better your placement, wherever that is. The advocate should also have more investigative powers. So, for example, an officer can go to a house to subpoena

somebody from Monday to Friday from 9 to 5, within reasonable hours, whereas the advocate has to call and say she's coming. That can sometimes give placements time to hide or change whatever it might be. I think that happens quite a lot. I know I've seen it myself. Maybe just having the hours would help that a little more.

**1650**

**The Chair:** Okay. Thank you. There's some time left. In fact, there are about 10 minutes left, and what we're going to do is have a few questions. They won't be hard; I promise you that. You can answer them if you want to, and if you don't want to answer them, you don't have to.

In rotation, we'll start with the Liberal Party—they'll get three minutes to ask you questions—and then the Conservatives and then the NDP. Three minutes each. We'll start with Maria.

**Mrs. Van Bommel:** Hi. How are you? Thanks for coming in. Actually, it's very important for us to hear from you because you are the consumer group that is going to use the advocate, and we need to hear what you're thinking on this whole issue of a child advocate. There are a couple of different things in here. They're all very important. One of them is finding out about the advocate and how to access the advocate. What is the best way to do that? How do you find your information? Is it through the school? Do we put it on Internet sites? How do we best get that information out so that all children know that they have an advocate working for them and they all know how to access that advocate, with the privacy that they need? You talked about somebody saying that you might be punished if you contact. What is the best way to get that information to you, and what is one of the best ways for you to use that information and access the advocate?

**Kat:** I think it should be mandatory to have information available. In some group homes and foster homes and even in some hospitals, they have posters. It's just a very basic outline of what the advocacy office is and the number that you can call. I think it would help if that was actually mandatory that every placement has to have it, because I know that's not happening right now. I think that would help, just to have more awareness that way. Also, focus groups, websites, things like that, were things we all talked about to bring out the advocacy and what it's about.

**Mrs. Van Bommel:** How did you find out about Bill 165?

**Kat:** The girl to my left.

**Mrs. Van Bommel:** How did you learn about it?

**Erica:** It's a peer thing. I found out about the advocate and all that through another youth. He found out through another youth. It's word-of-mouth; that's definitely how I've used it and how really anybody has used it.

We had talked about planning for this, focus groups and surveys. I know right now it's best practice to have the posters, the numbers, the cards and everything posted in group homes and some hospitals. I haven't seen any in hospitals. Group homes, schools, foster homes, I guess—they're supposed to have them there too; I've never seen one in a foster home. I know that one of the issues was

that funding was cut somewhere along the line, and we didn't have the available resources to post those. That's just one of the issues within the current act.

**Mrs. Van Bommel:** Thank you.

**The Chair:** Thank you. We'll move on to Lisa.

**Ms. MacLeod:** Thank you guys very much for coming: Erica, Paul and Kat. Everything that you mentioned here today as key issues—access, age, and simply not knowing about the advocate—was raised this morning. But what's so important about your presentation is that you're the first ones who need to access this advocate, and it's coming out of your mouth to us, which I think is extremely important. So I wanted to say thank you for taking the time today.

I want to read to you something that we received as a committee earlier. I'm not sure if my other colleagues read it. It's from Syl Apps centre in Oakville. It's from nine young people in custody. They say:

"The only reason we are able to contact the office of the advocate is because staff in the facility are required to place a call through to the advocate's office within a 24-hour time period from the request. Many of them do not want to do so. The only reason we are aware of the existence of an advocate is because there are signs posted in several of our common living areas. If this bill is passed," they ask, "will those signs come down? How will we know who to turn to when our rights are being violated? Many of us aren't even 100% sure what our rights are until an advocate fully explains them to us," and they go on.

I think that's very important to read into the record. I just want to follow up with my friend Maria, who asks, "How do we get the information out to you?" Should we put up a website or should the advocate find ways—is it Facebook? I don't know. I'm on Facebook. I'm also the youngest member of the Legislature, but don't tell anyone else that. Those are some of the things. Should we be thinking outside of the box here? I know that your generation is different than mine and mine's different from others here.

*Interjection.*

**Ms. MacLeod:** I just said that to you, David. I'm teasing you.

I just want to know: How do we effectively communicate to you guys so that you know what's out there? Are you nervous about this bill passing that the signs will come down?

**Kat:** I would be nervous about that myself because kids are mistreated everywhere. It's not just in a group home or a foster home. It's everywhere, and I think they should have the right. I don't actually think the staff should have to call. I think the kids should have the right to call, and I don't see why the staff would call if that's who they're reporting. That seems a little backwards to me—flip-flopped.

**Ms. MacLeod:** You're right.

I just have another quick question, and please finish that thought: Should we post these notices in schools?

**Erica:** Yes, actually. Along with that, though, if they're going to post them in schools—like Kat said,

people don't even know their rights. They don't know that they have the right to—we've gone over a few of the rights on the ride here. It's specific things, little things. They might seem trivial, yes, but when you're in a group home and you have no control over anything, those little things really matter.

Definitely, when they post those things, they should post the rights too because they're really hard to remember. Even then, definitely another right to be added—I'm not sure how this would go about coming into effect, if it would be involved in this, but you have the right to access a lawyer independently, or if you'd like to speak to a lawyer privately—you have a right to speak to your social worker privately. You should have the right to speak to the advocate privately. That's another thing that we had talked about in London and all that jazz too, right? You don't know your rights. You have no reason to call the advocate. Ignorance is not always bliss.

**Ms. MacLeod:** Yes. You guys are amazing. Thank for coming today, and if you ever need to talk to anybody, you can talk to any one of us. Okay? Thank you.

**The Chair:** We'll move on, then, to Andrea.

**Ms. Horwath:** I just want to know where you got your piercings, because they all look really great. Did you all go to the same spot? It looks great.

**Erica:** At different times, probably at the same spot.

**Ms. Horwath:** You should do a little advertising for whoever it was, because it looks great.

I want to follow up on two really quick things. One's with Paul. Paul, you talked about the issue of the age limit. Do you have any recommendation on what the upper age limit might be? Some days I need an advocate, I have to say. You're saying that 18's not appropriate, and I agree with you. Did you have any dialogue about if there is an upper age limit that you might support?

**Paul:** The age only gets changed because, right now, I have two more years before I get kicked off of ECM. We'd like to get the ECM rate changed too, instead of 21, to 24. So if it does get changed, then we'd like to have it so that when you're 24—as soon as you're 21, and if it gets changed—

**Mr. Zimmer:** What's ECM?

**Paul:** Extended care and maintenance.

**Ms. Horwath:** Extended care and maintenance. It's part of the Child and Family Services Act. We tried to get that changed in the last bill, but it didn't work either.

**Paul:** Say I have a problem: I'd like to be able to call them and then they'd come down to London and talk to me about it and everything like that.

1700

**Ms. Horwath:** That's great. I'm glad you raised the issue of the kind of—I think you were calling it the flip-flop. It seems kind of backwards—right?—about asking the person who's responsible for your care that you're complaining about to get you the phone so you can complain about them. That's kind of bizarre. That has come up, and there are criticisms specifically about this legislation because, in fact, it doesn't speak to that. It speaks to the fact that you have the right to access the advocate, but the bill—the nitty-gritty—the way it's written doesn't

talk about the fact that you should be able to have access to a phone and to some privacy so that you can make that call in security and know that you're not being spied on by somebody. You don't have to feel like there's somebody behind your back listening and watching everything you say and do, because that's totally inappropriate. Again, I think it's important that you raise that, and I'm certainly looking forward to bringing some amendments that are going to cover off some of those issues. I'm very glad that you raised it.

The issue that I'm a little more worried about is how we get over—some of these things we can deal with in legislation, but like Maria was talking about, where do you advertise? How do we let young people know that these things exist for them to access? You raised the stigma issue. So how do we get rid of the stigma for young people who are accessing the advocate or who are trying to enforce their rights? You're the young people; you would experience the stigma, right? So what do you need to feel, "I shouldn't be embarrassed about this; I shouldn't feel badly about this; I should feel proud that I understand my rights and proud that I'm enforcing my rights"? How do you switch that to a positive thing instead of a stigmatization situation? Any idea, suggestions?

**Kat:** Yes. We briefly talked about having a peer advocate almost, like a peer mentor. For example, Erica tells me, usually, and she has heard from other people—

**Ms. Horwath:** So this is the peer thing you were talking about. Very good.

**Kat:** Right. It's like a chain, and everyone finds out that way. If you had a system even with a phone number, because it's easier, I think, for youth to talk to youth in some situations, and then that youth could direct them to the advocacy office with the right information. If it's their caretaker whom they want to report, they're not going to want to go to them, naturally. They'd want to go to a friend. So I would think that would work.

**Ms. Horwath:** So establish this network and maybe provide some funding and supports for it so that it exists within the control and the response from young people as opposed to everybody else—agents or bureaucrats or however you want to put it.

Thanks. I appreciate that. Thank you very much for coming in. I really do appreciate your comments.

**The Chair:** Thank you. That completes the presentation. Thanks for coming out. I guess you're going back to London today. So thanks for coming to Toronto to visit. You're welcome to stay if you want to; we're going to be here a long time.

RESIDENTIAL PLACEMENT  
ADVISORY COMMITTEE,  
FAMILY SERVICE  
WINDSOR-ESSEX COUNTY

**The Chair:** Our next presentation is a teleconference. It's the Residential Placement Advisory Committee,

Family Service Windsor-Essex, and it's Paul Daignault, coordinator. Hello, Paul. Are you there?

**Mr. Paul Daignault:** Yes, I am, thank you.

**The Chair:** Hi. I'm Lorenzo Berardinetti. I'm the Chair of the committee. You have 15 minutes to make your presentation. If you don't use up all your time, we may have some questions of you.

**Mr. Daignault:** Okay. I want to thank the committee for allowing me to address some of the issues I want to speak to.

I'm a professional social worker. I worked for some 34 years at a children's aid society in Windsor here, the Catholic Children's Aid Society for Essex. After I retired, I worked for one year at Chatham-Kent Integrated Children's Services. I retired in 1996 and I've been in private practice. I've also worked for the children's lawyer's office when there are issues of custody and access. I've been in private practice. For the last two years, I've been involved as a member and chairperson of RPAC for the Windsor-Essex, Chatham-Kent, Sarnia-Lambton committee. I'm currently, as I said, the coordinator of that committee.

I'm sure that members are aware, but there is section 34 in the Child and Family Services Act that sets up a residential placement advisory committee. Basically, there's a requirement under the Child and Family Services Act that whenever a young person or child is placed in a residential setting—that's one with 10 beds or more—there's a requirement that if the placement is going to last 90 days or more, an outside group, known as an RPAC, needs to meet with that child, the parents, the guardians, the service providers, to review the placement, to make a determination if the placement is addressing the child's special needs and what their special needs are, and to basically make recommendations. For example, to make this concrete, in our area here, there are Maryvale in Windsor and the Windsor Regional Children's Centre, and the Inn of Windsor, which services adolescent girls. There's no 10-bed residence in Kent county, but in Lambton county there is the Huron House home for boys and the Community Girls' Home.

The way the system is set up currently is that when a young person is admitted to those programs and the length of stay is expected to be 90 days or more, I receive—not myself, but my secretary receives—a notice of the placement. We then arrange for a committee. We invite the child and the parents or guardian, and if the child is a crown ward with access, we invite the parent, and perhaps a representative from the children's aid society—not perhaps; we do invite them; if the child is in care, we expect the CAS to have a representative there—as well as the service provider—someone from Maryvale, for example. The committee consists of myself as coordinator; a chairperson, who is a citizen committee member; a service agency representative; and a representative from the ministry. So it's basically a committee of four. We meet at the facility, so we do see the child, and we basically discuss why the child is there and how they feel about being there. We then make recommendations in regard to the placement.

When the child remains in the program, we need to review it within nine months. In some situations, where there are some issues or concerns, we might decide to review the placement in three months or six months, but we must review it within nine months.

My purpose is contacting you is to make you fully aware that there is a structure in place that does sort of complement the work of the advocacy office. As I say, there are mandatory reviews for children placed in residential facilities.

Also, in section 34 of the act—and I've sent you a copy of that—there is a section that deals with a child who is in a group home and is complaining about his placement. We review those placements also, a group home being a facility with five to nine beds.

Every year we receive several referrals from the advocacy office at the present time. They may have received a phone call from a young person in a facility who is complaining that maybe the setting is too intrusive, they don't have enough freedom or they're not seeing their parent often enough. It could be whatever sort of complaint. But the advocate's office will contact myself as coordinator here if the child is from the tri-county area. They'll contact myself. I'll then contact the child, and I'll arrange for an RPAC review of that placement.

When I looked at Bill 165, I looked at the bill in total. I noticed there's a number of similarities between Bill 165 and section 34 of the Child and Family Services Act. Many times the function and purposes are almost identical. Basically, one of my recommendations is that, when the final wording of the advocacy bill is done, there be some reference made to an RPAC, the existing structure. Under "Powers," 14(1)(b), it's proposed that the advocate can basically conduct reviews, and I might suggest that they also can request a residential placement advisory committee in the child's home jurisdiction to conduct a review.

I'm saying that there is a system in place to review placements of children in residential facilities. I'm going to Maryvale tomorrow with a committee of three others, and I'll be doing one new placement and three existing placements.

The RPAC is, I think, at arm's length from the ministry. We're funded by the ministry, but we've been located since 1985 or so at the Family Service Windsor office here, where I'm calling from. The letter that we send after we've had a review, the finding, the recommendation, is sent to the child, the child's parents, the children's aid society, and a copy goes to the program supervisor here in Windsor with the ministry.

That's the bottom line of my presentation, so I can maybe answer your questions or open it up for discussion.

1710

**The Chair:** Thank you, Mr. Daignault. We have about two and a half minutes per party, and we'll start with the Conservatives.

**Ms. MacLeod:** Mr. Daignault, I'm the official opposition's critic for the Ministry of Children and Youth

Services, and I just wanted to say thank you very much for your presentation today and for providing a perspective from the other side. So I just wanted to say thanks, and we'll take everything into consideration.

**The Chair:** Andrea Horwath from the NDP.

**Ms. Horwath:** Hello, Mr. Daignault. I appreciate your remarks as well. I'm wondering if you're aware of the Auditor General's report that came out in the fall. Some would say that it was the impetus for the minister to finally get this bill on the table, in terms of his criticism of some of the accountability of children's aid societies in the province of Ontario. Are you aware of that report?

**Mr. Daignault:** In general.

**Ms. Horwath:** I'm not raising that in any way at all as a criticism of the service that you and your committee, particularly, provide. But I think it's important to put on the record the reality that the reason we need a child advocate who is independent, as well as the reason, frankly, that we need independent oversight of children's aid societies by the Ombudsman, is because the auditor, the guy who only really looks at money, found significant problems within the systems that we have in place.

I think that what your presentation is saying is that we have systems in place already. What I would submit to you is that there is significant concern in many quarters that the systems that we have in place to deal with the issues of children and youth and their experience with things like the child and family services sector, the child welfare sector, have not been positive at many turns. So the reality is that although systems are in place, the systems are not effectively and not appropriately helping our children, which is what we want them to do.

Again, I'm not raising this in any way as a criticism of yourself, but rather to say that the office of the independent child advocate—as well as, I would hope, one day soon, the Ombudsman—the whole purpose of it is to determine where the systems are failing our children and how we put in place the repairs that need to be made to the systems so that our children have a fighting chance, often in circumstances where they've been dealt a pretty nasty hand. I want to put that out there, because although I do respect the work that you and others like you do, I think we need to acknowledge that the reason we're here today is to talk about how we provide opportunities for young people to say, "Look, it's not working for me. The system is failing me, and somebody, darn it, needs to hear what I have to say about that."

**Mr. Daignault:** But I do want you to know that we do—I'm not speaking from a children's aid society perspective, but all children in care are given a pamphlet or should have a pamphlet and should have information reinforced by their worker about their rights and the process for following through on their complaints. One of those is certainly, if they're placed in a residential facility, that there's an outside group that does come in that's not affiliated with the children's aid society. We're basically an independent group. The chairperson in Sarnia is the director of Big Brothers; then there's a ministry rep and there's a representative of an agency. So

we're an independent group that's looking at the child many times. We do make criticisms of the CAS. Sometimes there are kids who are placed in a facility where really they don't have a parent to plan for them, where the CAS really should have stepped in and provided some care for this child prior to the 16th birthday because the child is basically sitting in a limbo situation with no real family supports. We've made recommendations like that.

**Ms. Horwath:** Can I ask if you would agree, then, though, that the more the better in terms of people who are part of that team whose job it is to make sure that the children are receiving the kind of care and services they need?

**Mr. Daignault:** Yes. Maryvale is very well-thought-of. Huron House home for boys is another well-thought-of facility. They're all licensed. There are people who come in and make sure that they meet licensing requirements, and there are outside groups like ourselves which do meet with the individual child in person and with the child's parent to get some view from the parent as to how the child is doing, how they feel about the child being there. Things are a little different. With children in those facilities, they are not there by way of a court order, usually. They've been part of a plan of care.

**Ms. Horwath:** Thank you.

**The Chair:** Any questions from the Liberals? No. Thank you, Mr. Daignault, for your presentation today.

**Mr. Daignault:** Okay. Thank you very much.

#### MNAASGED CHILD AND FAMILY SERVICES

**The Chair:** Our next presentation: I think we are trying to get through to Mnaasged Child and Family Services. Again it's a teleconference. Carrie Tabobondung is the executive director.

Hello, it's Lorenzo Berardinetti, Chair of the standing committee on justice policy. I'd like to welcome—is this Carrie Tabobondung?

**Ms. Carrie Tabobondung:** Yes. Thank you.

**The Chair:** Welcome to our committee. You have 15 minutes to make a presentation. Any time you don't use in your presentation, committee members may have some questions of you. You can begin.

**Ms. Tabobondung:** I would like to begin by introducing myself once again. My name is Carrie Tabobondung, and I am the executive director of Mnaasged Child and Family Services. Throughout my address, I will be using “indigenous” and “First Nation” interchangeably to state the first peoples of this country.

Mnaasged Child and Family Services is a newly developed indigenous, pre-mandated child and family services agency in southwestern Ontario. The agency—

**The Chair:** I apologize for interrupting. We can barely hear. Maybe it's because of the distance or something, but some members of the committee, myself included, just have difficulty hearing. Take your time. You've got lots of time to speak, but nice and loud.

**Ms. Tabobondung:** Okay. I'm just wondering if the hands-free might be better, because I am speaking into a telephone. Is that better? Can everybody hear me?

**The Chair:** If you can put the telephone as close as you can to your mouth, perhaps that would be the best way.

**Ms. Tabobondung:** Okay. Is that better?

**The Chair:** Yes, it's getting better. If you just keep that volume level up, because I think some of us are getting older and harder of hearing.

**Ms. Tabobondung:** All right. I'll start again. I think most of you heard when I introduced myself as Carrie Tabobondung, the executive director of Mnaasged Child and Family Services. I also stated that throughout my address, I'll be using “indigenous” and “First Nation” interchangeably to state the first peoples of this country.

1720

Mnaasged Child and Family Services is a newly developed indigenous, pre-mandated child and family services agency in southwestern Ontario. The agency provides prevention-level services to seven First Nation communities. Those communities are: Aamjiwnaang First Nation, Kettle and Stony Point First Nation, Delaware Nation, Oneida Nation of the Thames, Chippewa of the Thames, Munsee-Delaware Nation, and finally, Caldwell First Nation.

Mnaasged means “something shiny,” related to the bright shining star just before dawn, which is known as the children's star. An elder from Chippewa of the Thames gave this spirit name to the organization early on.

The Mnaasged Child and Family Services initiative was the vision of the London district chiefs in early 2001 and 2002. That began with a social service agenda that encompassed child welfare, among other social issues. Mnaasged is a result of the chiefs' response to the alarming number of First Nation children being lost in the child welfare system and the rising number of First Nation families embroiled in child welfare matters. It's this motivation that has brought Mnaasged to the status it's at today. That energy is what continues to drive the leadership, the community workers and the technicians to reach the overall vision of the London district chiefs, which is total jurisdiction over First Nation members in child and family service matters. The hard work that has been put into this organization from day one, along with the incredible teamwork of the leadership, community workers and technicians today, has contributed to Mnaasged's solid foundation, with a clear path to full-society mandate by 2011.

We don't want to compromise our most valuable resource, which is our children. In First Nation culture, children are at the forefront of our way of life. The belief is that a child is a gift from the Creator, and the highest order of respect that we can show is to accept responsibility for the care and nurturing of that spirit and each child entrusted to us by the Creator. It is the belief that they are our future, and they must be coveted, protected and nurtured so that they can carry on the indigenous

knowledge they attain throughout their lifetime. It will then be passed on to their children, and the life cycle continues. The indigenous paradigm is different than the mainstream paradigm, which is the basis of my viewpoint on Bill 165 and the need for a child and youth advocate.

First, let me start by talking a little bit about our philosophy. We believe our children have rights too, much like you do. For example, indigenous children have a right to a spirit name, which is different than the English name given to most children. This spirit name identifies them in the language and provides them with a connection to creation. We believe that another right of children is a clan which assists them with their purpose and life work while they're here. Language is an opportunity to learn their first language as a means of communication and connection to Mother Earth. The land and resources—providing a connection to the land and resources that are there for them; family, which provides the nurturing, protection, support and identity to the child; love and nurturing, which is provided by parents, extended family members and community; safety and protection, which encompasses the belief that it's the responsibility of the extended family and community to raise the child; education—they have a right to learn the indigenous knowledge from their family and community about their people; and finally, culture and a way of life, which encompasses their spiritual rights—these are all needed to establish a solid foundation for indigenous children, along with the basic needs of a human being.

So my first question for the establishment of a child and youth advocate is: How will the advocate ensure that the rights of indigenous children are adhered to while in government care? What guides the advocate in protecting these rights?

The motivation of creating Mnaasged is to strive for excellence when it comes to indigenous children and families. The historical and contemporary attempts to protect indigenous children in this country have not been successful. This is based on the disproportionate numbers of indigenous children in care. We believe that we can do a better job when it comes to child welfare matters. It is based on an indigenous framework that encompasses the rights of indigenous children and a commitment to work with the child and family services legislation in this province.

My next concern is how effectively the advocate will respond to the needs of First Nations children and youth. Additionally, what sort of training will be accessed by the advocate and his or her staff to respond effectively to First Nations children and youth needs?

Mnaasged is located on Delaware Nation. The site offices exist in each First Nation community. How will the advocate deal with jurisdictional issues? My first recommendation includes a separate advocate office that deals with First Nations children and youth needs that is established with First Nations and staffed by First Nations personnel. If this is not practical, my recommendations include incorporating First Nations in the development of the advocate office. In order for staff to

deal effectively with First Nations children and youth, the advocate office needs to embrace training by First Nations to sensitize them to the historical and colonial context of indigenous people in this country.

Finally, I believe it's very important for the office of the advocate to work with First Nations on establishing protocols to ensure positive working relationships.

That concludes my presentation to the standing committee on Bill 165

**The Chair:** Thank you very much. We will spend the remaining time of the 15 minutes, which is approximately eight minutes, asking some questions. We'll start with the NDP, Andrea Horwath.

**Ms. Horwath:** Thanks, Ms. Tabobondung. I'm wondering if you can tell me if you would consider it a positive thing to ask the members of this committee to recommend to the government that the legislation include specific reference to the need for an advocate for First Nations communities, whether that be a deputy advocate or a co-advocate or some kind of acknowledgment in the legislation that the independent advocate's office set up a separate advocate's office, perhaps located closer to some of the First Nations communities, perhaps in the north, that is separately resourced and actually staffed by representatives from First Nations communities; that the staff, the advocate themselves, the co-advocate or deputy advocate, whatever you want to call them, is from an aboriginal or First Nations community and that all of the staff who resource that office also be indigenous peoples. What do you think about that?

**Ms. Tabobondung:** I think that is an excellent idea. One of the things that I think people get—and I've seen this in the documentation that I've researched prior to putting together my position, and that was having an office in the north, but I think something centrally located, because we do have quite an indigenous population in the south as well.

**Ms. Horwath:** That's a good point. I come from Hamilton, and of course we have the Six Nations very close to my community. We have a number of urban native communities within Hamilton, so I respect that observation and thank you for it. Perhaps a bit of both, perhaps a bit of the thing that you suggested in terms of making sure that our advocate's office is sensitized and trained, and in terms of the southern Ontario populations, has some of the capacity in our southern Ontario office, but then also perhaps something more in the north to be able to service the more remote communities as well.

**Ms. Tabobondung:** Exactly. And your suggestion around either a co-advocate or a separate arm or something that works in conjunction with is also reflected in the recommendations that I put forward.

1730

**Ms. Horwath:** Thank you very much.

**The Chair:** We'll move on now to the Liberal Party.

**Mrs. Van Bommel:** Thank you, Carrie, for all the work you do. Of the First Nations bands you listed, actually all of them are in my riding, except for Caldwell and Aamjiwnaang. I have certainly had an opportunity to

talk to the chiefs about what's happening to the young people of our First Nations. Could you, for this committee, tell people what happens when First Nations children are taken into care? What's going on right now?

**Ms. Tabobondung:** What we've been seeing—there's a wide spectrum, I guess. Some of our children are being taken right from the hospital—so from babies that are being apprehended from the hospitals to children being put into care, and some of our children are hard to place. I think it happens in the mainstream as well. But there's a certain age where they're not as easily placed and a lot of times get placed into institutionalized settings like group homes and that sort of thing. So there are lots of stories about our kids going into these institutions and being kind of shuffled around, not really having a strong base or foundation in any one of these places for very long. Of course, with the babies there's a very short time frame in terms of getting the parents to either turn around or adhere to some of the conditions that the societies have put on them. There isn't a lot of time to do that.

One of the things we are looking at as an agency, as we develop, is looking at strategically planning to get in there really quickly to start working with our parents, being really creative around that. We find, and just talking to my staff right now, that that seems to be where we need to focus our efforts because we are losing a lot of children and we're finding that some of our parents are not getting adequate support right at the get-go. I think there's a very short opportunity there for us to get in. That's one of the areas we're focusing: getting in very quickly to facilitate a quicker turnaround so our children can come back home. We're also looking at customary care, building the supports, the education and the awareness needed so that we can have the homes in our communities available for these children.

**Mrs. Van Bommel:** Thank you very much, Carrie, for everything you're doing.

**The Chair:** We'll move on, finally, to the Conservatives.

**Ms. MacLeod:** Thanks to my colleagues for this, and thank you, Carrie, for the work you're doing and for taking the time to talk to us today.

I just want to pick up on what my colleague from the NDP was talking about, which was the deputy advocate. I'm not sure if you know this or not, Carrie, but earlier today the first presentation we received was from Judy Finlay, who is presently Ontario's child advocate. She recommended that there be a deputy advocate who's a First Nation person with knowledge of and interest in the remote and northern communities. She suggested that the child and youth advocate needs to promote the preservation and reinforcement of the unique sense of place, identity, language and community among aboriginal children.

I was interested to note that once Ms. Horwath brought this up to you, you thought that maybe this should be enshrined in legislation based on the unique needs in your community. I just want to ask you to reiterate your thoughts on that.

Secondly, we had some youth in earlier today and we wanted to talk a little bit more about communicating the office of the independent child advocate. I'm wondering, from your perspective, how we would effectively communicate to your youth about this office, or if indeed there is a deputy child advocate for First Nations.

**Ms. Tabobondung:** I'll start with the whole idea of having a deputy advocate. I guess my thinking around that is that that would be the best approach, and obviously it's being supported by the current advocate.

One of the things that stuck out for me when I was reading the information was the complex needs. When we think about the First Nation children and youth in our communities, we always think of them as high-risk. It doesn't matter what family they come from; they're always considered high risk just because of the issues, whether they be historical, but definitely the social issues that exist in our communities, such as poverty and the disproportionate numbers of our children in care.

I think that, just based on our history alone, the core or the strength of our communities lies within our families and our extended families. When you look at some of the things that were done, such as residential school, that is tacked to the very core of our communities. That's what we're trying to bring back full circle. If you want to put in a more positive way, we're trying to correct some of the things, the parenting styles and whatnot, that came from a lot of our ancestors' being raised in those institutions that didn't provide them with those tools.

So when we take a look at our strategic planning, that's what we look at. We did some research early on in this project, and the number one reason for children going into care from these communities was the capacity of parenting. We realize that we need to take a look at that when we begin developing the programs and services of this organization because we need to weigh heavily on teaching our parents how to be with children again. We're still reeling from the intergenerational effects of residential school. Those are some of the complex or dynamic needs that I could see this separate arm or the co-advocate playing because you need specialized training to deal with those complex issues or those diverse needs.

In terms of your question around how to effectively communicate that service or that the office exists in our communities, what I think works best in our communities is education and awareness. There are different avenues you could use for that, but what works best in our communities is word of mouth, getting out and talking to the people about these things. Whether it's community feasts or community gatherings, that's probably the most effective way. A lot of our communities still get together once or twice a year as a whole community to celebrate something, whether it be their fall fairs or their traditional gatherings. Those are really good opportunities to address the youth and children and our families in the communities because that's who's coming out to these events.

We have radio stations, newsletters. Those avenues can also be used effectively.

**The Chair:** I'm going to interrupt here. That completes the time, and I want to thank you, Carrie, for your presentation today.

**Ms. Tabobondung:** Thank you.

### BLOCK HEADZ

**The Chair:** We'll move on then to our next presentation, Building Links on Community Korner. If the members want to come up, there are a number of chairs here. My name's Lorenzo Berardinetti. I'm the Chair. Before we start, if you could just identify yourselves for the purposes of Hansard.

**Mr. Paul Green:** My name is Paul Green. I'm the executive director for BLOCK Headz.

**Mr. Boonaa Mohammed:** My name is Boonaa Mohammed. I'm also a member of BLOCK Headz and am also the director of community engagement for the Toronto Youth Cabinet.

**Mr. Kimani La Qua:** My name's Kimani, and I'm part of BLOCK Headz and part of TYC.

**Hassan:** My name's Hassan. I'm also part of BLOCK Headz and the Toronto Youth Cabinet. We're a volunteer-based youth organization at city hall.

1740

**The Chair:** Thank you, and welcome to the committee. The rules are pretty straightforward. You have 15 minutes to make your presentation. Any time that you don't use up, the committee members will ask questions. You can either have one person presenting or you can split the presentation up; whichever way you want.

**Mr. Green:** I think what we'll do is probably speak for ourselves for a couple of minutes and then open it up to any questions.

As the director of BLOCK Headz, I'll first tell you what the organization is about, really briefly. BLOCK Headz started approximately back in 1991 in direct relation to the high dropout rate of young black youth at the time. The Stephen Lewis report put it at approximately 50%. One of the main objectives of the organization was to go into schools and help youth organize around certain issues specific to youth—for instance, civic participation, jobs and career and business opportunities, knowledge of self as far as history, and also rights and responsibilities, both in the schools and in the streets. From that perspective, we've been advocates or teaching youth about becoming advocates. We use entertainment as a means to bring youth to the table, to I guess "edutain" youth and school officials and such.

Personally, I also have a history and an experience working with youth in young offender facilities, both in secure and in open custody. I supervised a group home for approximately two to three years. I've also worked at York detention as a corrections officer as well as a teacher, and also worked at York detention when it was publicly funded as well as privately funded.

I'll just give these gentlemen an opportunity to tell you—before they give you a couple of minutes of their time explaining what they do, I just wanted to also let

this committee know that there was an opportunity to bring many more youth to the table, because our name suggests a network: Building Links on Community Korner. We have a network of youth across not only the city but the GTA. Because of the short amount of time in finding out about this and being able to get the information out to youth, we weren't able to reach out to the youth that we really wanted to represent at this meeting. So I just wanted to make that point as it relates to just even reaching out and connecting with youth about this matter.

**Mr. Mohammed:** Like I said earlier, I'm a member of BLOCK Headz. I'm also the director of community engagement for the Toronto Youth Cabinet, which is a youth-based lobbying group out of city hall. Even in my role as director of community engagement, not even really knowing about what was going on with the bill and being out of the loop in terms of the process and there being not enough time for us to actually come and mobilize, it kind of reflects poorly on the committee. As the director of community engagement, my job is to be engaged and to be able to reinforce the ideas that are coming here and to my constituents, which is the youth of Toronto. I'd just like to say that it hasn't really been the best effort. Also, talking about how to better engage the youth, mobilizing the youth around the table, we're all very heavily involved in the community, whether it be the hip-hop community or the urban community and such.

I've recently been elected president of United Black Students @ Ryerson. Using that position to better engage the youth, I feel as though situations and policies like this have to be brought to the forefront, and youth have to be involved in the process. Otherwise, a lot of times, the policies get passed, and we suffer the consequences of the fact that we're not involved from the get-go. Our opinions are not taken into consideration, and there are loopholes and stuff that we're not able to comment on because we're basically not knowledgeable on the issue. So I just throw that out there.

**Hassan:** What I wanted to do is to speak about a little personal story that happened to me. I know we can talk about a lot of big talk. Basically, in 2003, I was in a youth detention centre called TYAC. TYAC is no longer open, and the reason why they closed it is because it wasn't a fit or safe place for youth at that time. So I was there and—I want to say this from the beginning—my charges were dropped; afterwards I was acquitted. I'm not a criminal. I don't have a record. But this is a story I want to share with you guys.

When I was in TYAC, the first night, I was asked—I was there during the strike. At that time, there were only supervisors. There were no jail guards; only supervisors. In the whole facility, there were about 200 kids, and about 15 to 20 people actually supervising it. What happened was, I didn't feel safe. I was actually attacked by the guards. I've been through a lot of hardship. There was no one at that time that I could speak to. There was no one I could go to. There was no one I could share my

story with. I shared my story recently with the advocate's office, and they said, "You know what, Hassan? If you knew about this, would you come to us?" And it was yes. I think a lot of times youth are not familiar with the advocacy office. Youth are not aware of their role, their responsibility.

Sometimes, it's really difficult. Currently, the advocate's office is connected to the province of Ontario, so the same people that put you through hardship are the same people you're complaining to, which is really difficult. It was difficult for me at the time and it would be difficult for any young people. It's just one of those things. It's important that we have an independent body that can hear some of these stories.

Also, I would like to recommend that this body not only deal with problems but also have an asset-based approach. The approach I'm talking about is, "Not only do we help you when things are going wrong, but let's work together. Let's build a community. Let's support youth. Let's help them. What do you want to do? What do you want to be when you grow up?" It's just one of those things. A lot of times, the government is there when you fall. What we're recommending is that, before the youth fall, let's support them and help them so they don't fall. If we had a body that was independent, it would be very supportive to youth.

**Mr. Green:** Again, I'd like to speak from an aspect of working in corrections and working with young offenders. I personally worked with David Meffe when he was at York detention. It was a situation where I was teaching, and he used to write letters to a few of the teachers that he was close to. I was one of the teachers that I guess he made a connection with. It was clear that things weren't right with his whole situation. Even the process of trying to speak to the problems that he was trying to address was very difficult. In talking to the York detention staff and trying to get them to speak to the problems he had, it was like a chain of command that everybody had to go through.

I don't think youth like David understand that there is an advocate they can go to and speak to and try to help their situations. I've been in many situations because, as I said, I was a teacher and a corrections officer, and I was on the units at times when kids were looking to speak to someone outside of the facility for complaints, and there wasn't really any way this could be addressed. At the time—I don't know if it's the same thing now. But even the Ombudsman was somebody who was staff before. There was a lot of conflict of relationships in trying to make a statement for youth.

I think it's very important. I know it's not even decided what areas of youth services this bill will cover, but I know it's very important to youth who are in custody, whether it be police custody or whether it be in a detention facility, either open or closed; they need to know it's something that's separate and they can feel comfortable in being able to go to the powers that be about their situations.

**The Chair:** Thank you. Any other comments?

**Mr. Green:** If there are any questions—

**The Chair:** I'm sure there will be some. We'll start this time with the Liberals. We have two minutes per party.

**Mrs. Van Bommel:** Thank you. I'm really glad you're here. But I get from you that you just barely heard about this, that you didn't know this was happening and it was more by accident that you found out. We've struggled over and over again today already with how to communicate this whole thing. We have an advocate for children and youth, but how do we communicate that? You talk about doing it through entertainment. I know my colleagues said Facebook, and my granddaughter likes MySpace.com. The thing is, how do we get the message out? How do we make sure that the youth and children know there is an advocate for them? I'm kind of struggling with this one.

1750

**Mr. Mohammed:** One major barrier is that the language sometimes is constructed in a way that may not be familiar to a lot of the youth, and there's a lot of bureaucracy around the way the information is delivered. Even the approach BLOCK Headz takes, using the edutainment method to educate people—unfortunately, youth don't have the greatest attention span, and sometimes sitting through meetings and the lingo and stuff gets boring, basically. So using it in a way where we can entertain youth, have it in a way that's meaningful to them so they can actually listen, and then kind of slice in the education—almost like tricking them, to a certain extent.

Right now I'm doing a tour around Toronto high schools getting youth involved in youth politics, the idea of civic engagement and our responsibilities as citizens of Toronto. It's information and it's a lot of lingo that isn't really youth-friendly and it's not something that youth can just understand that well. I'm a spoken-word artist myself, so using a method like poetry, where you're able to convey a message and it might be in a certain language they'd understand better—that's a method where youth are able to understand what's going on, and eventually, over time, breaking down the language barrier and becoming more comfortable. Even our being in an environment like this right now—not many youth would feel comfortable even speaking to you guys, you know what I mean? It's kind of intimidating, to tell you the truth. It's making it more comfortable and explaining to people that we deserve to be in places like this and this is where our opinions are valued. It's bringing them to the table and showing them that their opinion counts and giving them an opposition to express it.

**Hassan:** Another way is that we live in a very large province. It's really difficult to get the voices of youth. One of the things we recommended was, how do we bring the voices of youth to this table? A powerful way is through video. I'm not sure whether you guys have the resources here, but if youth were able to communicate to you guys through a format that is video-based, as opposed to actually coming here, taking the time out of—youth are at school and it's exam time. It's really difficult, you know? One of the things I would like to also

recommend is—I'm not sure what facilities or offices the youth advocate's office has, but they need to be across the province of Ontario, not just in Toronto or the major cities but everywhere so youth could go to these facilities; that it's not a phone call but an actual location they can visit.

**Mr. Green:** The last thing I'd add is that you brought up MySpace. I think the key is going to where youth are, so going to the network—youth communicate in different ways, you know? It's a subculture to the main culture out there. The key is that you do have to connect with either a lot of different youth organizations—and not only youth organizations; I'm talking even looking at the entertainment industry and areas where youth already are—if you want to get the response that you're really looking for.

**Mrs. Van Bommel:** Thank you.

**The Chair:** We'll move to the Conservatives.

**Ms. MacLeod:** I love your name, BLOCK Headz. You're definitely not blockheads. It was great to listen to you.

Paul, I want to thank you for starting, as soon as you opened your mouth, to say that we inadequately let people know about this. My colleague and I from the NDP, I want you to know, thought this was an inadequate time frame; it couldn't have been a worse time frame. We thought the committee should have been travelling. We thought we should have been using different methods of communication. My colleague alluded to the fact that I'm on Facebook; I'm hoping I can get some more friends here, because we're televised right now. But you go where the youth are. I'm so happy that most of you are members of the Toronto Youth Cabinet, because back in 2002-03, I was part of the city of Ottawa's first youth cabinet. When you're talking to youth, it's maybe very hard for people here to understand that you have to start doing things for youth by youth and get them included.

I know we're beating a dead horse, essentially, trying to talk about how we could have made things better up until this point. But there are two things now. How do we get youth engaged in the process? We've got Bill 165 here, so they still have time to communicate to MPPs on this committee. Second, once there is an advocate in place, how do we let them know there's an advocate? I guess that's the question I have to ask you folks, because you are youth. The third thing: I thought it was a great idea this morning to have a children's and youth's bill of rights. I ask all four of you if you can comment on those three things I just mentioned.

**Mr. Mohammed:** I can start off. In terms of the idea of how we get youth involved and how we get them to know about these things, I think it goes back to what we were saying earlier about the mode of communication and getting people who understand the youth and who can communicate with the youth to do the communicating. A lot of times, people may be outside of the circle trying to reach in; there's a big bubble and they may not be able to get to them. An organization like here, right now—we can do that. If there's something on the table—

**Ms. MacLeod:** If you know.

**Mr. Mohammed:** Yes. If we know about it and it's in adequate time and there are resources available, these are things that are very easily done.

Like I said, I'm on a tour right now, teaching youth my age, my peers, about youth engagement through politics and civic engagement. That's not exactly the easiest thing in the world, but it can be done in a way that's meaningful and that's also very entertaining at the same time. It's taking the information and almost condensing it in a form that is edible to youth in a way that's engaging and won't make us feel like we're being preached to. A lot of times, parents and teachers kind of talk down to youth. We talk to youth about talking with the youth, talking with them about what needs to happen.

Communication and the way we do it is the key in terms of making sure that youth get the message. After that, it's keeping the contact and making sure we know what the next step should be in terms of this process.

**Ms. MacLeod:** What do you think the next step is after leaving here today, knowing that we have a day filled with committee hearings but that there are still a few days left to consult with all of us? How do we do that? How do we make sure that kids in Toronto, Ottawa and up north are being communicated—

**Mr. Mohammed:** There are a lot of grassroots organizations in a lot of these cities that have direct contact with these youth. I have youth constituents all across the city. With the touch of a button, I can easily send out an e-mail to thousands of people who can find out about this information. It's communicating with these individuals, these people who are stakeholders in this, people who can also help you indirectly speak on behalf of youth and get the youth to the table.

**Ms. MacLeod:** Bring it down to the grassroots, essentially.

**Mr. Mohammed:** Exactly.

**Mr. Green:** I just want to say very quickly that I think there's a lack of linking to the youth who are living in at-risk conditions who are going to be using the youth advocate's office. I don't think it's okay just to reach across youth and touch a lot of affluent youth who are connected and are part of the youth cabinet anyway. There are a lot of youth who really don't know what the advocate's office is about.

It's simple. If you're looking at easy ways, there's MuchMusic, there are radio stations, there are advertisements. I think that how much money is put into the promotion of it is a reflection of how important it is.

**The Chair:** I'm going to have to move the meeting on.

**Ms. MacLeod:** I talk too much, is what he's trying to say.

**The Chair:** That's okay. All of this is important.

Andrea Horwath for the NDP.

**Ms. Horwath:** I want to thank all of you for coming here. I also want to pick up on your comments about how ineffective we've been in terms of connecting with youth. I agree with Lisa about the fact that we tried to fight that fight at the subcommittee level to try to encourage the government not to be in such a hurry.

The government waited until the last minute to put this bill forward. The independent child and youth advocate should have been announced three years ago, and we should have gone through a three-year process of engaging young people across the province in every community and in every circumstance, to get their voices heard and bring their issues to the table and their experiences, as you've said. I agree with you 100%. But because the government didn't bother to do that—in fact, they threw a bill in front of us without having done that themselves. Even if they didn't invite me, I don't care, as long as they're inviting you—do you know what I'm saying? But they didn't. Now we're in a situation where we tried like crazy to scramble around and get some kind of engagement happening. I know the child advocate's office has also tried to get people here.

I just want to say thank you so much. It's disrespectful, the way you got here, without enough notice, without really having the opportunity to have the fulsome discussion with us. I feel badly about that. I wish I could change it; I can't. But I want to say that everything you brought to the table was extremely important. I hope, as we move forward and talk about how to—I think it was you, Hassan, who was saying that we should make this an asset-based approach in the future. Holy smokes. If today we haven't learned from you and other voices who have reflected exactly what you've said—that we need to be proactive and more engaging to create a better future with youth—then we're going to continue to fail in that effort. When the child advocate's office becomes independent, after the bill is in place, we need to really make sure that the pieces that allow them to be proactive are going to be there as well so this doesn't happen again.

**The Chair:** I'm under pressure to move the meeting on. Do you have one quick point, Hassan?

*Interjection.*

**The Chair:** Let him make—they're youth; we're here to listen to the youth.

1800

**Hassan:** Thank you. One other thing we could do, in terms of a recommendation, is expand the jurisdiction. There are a lot of youth who are falling through the cracks. There are a lot of youth who do not fit the criteria for the youth advocate's office to work with. There are a lot of youth who live in shelters. There are a lot of youth with mental illnesses. There are a lot of young people that the advocacy office could be working with, but they're not because they can't. Broaden the mandate and make it more inclusive in terms of youth who are dealing with hardships. Expand that and make it larger.

**Ms. Horwath:** Thanks. I appreciate that.

**The Chair:** Thank you for your time and for your excellent presentation.

#### ONTARIO FIRST NATIONS YOUNG PEOPLES COUNCIL

**The Chair:** The next presentation is Ontario First Nations Young Peoples Council, Nick Mainville. Is Nick

Mainville here, or anyone from Ontario First Nations Young Peoples Council?

**Ms. Sasha Maracle:** Yes. My name is Sasha Maracle. I'm a member of the Ontario First Nations Young Peoples Council.

**The Chair:** Is Nick Mainville here as well?

**Ms. Maracle:** No. I haven't seen him, anyway. He must have been unable to make it.

**The Chair:** You have 15 minutes to speak to us.

**Ms. Maracle:** Actually, I'm here as a representative of the Independent First Nations, so I'm going to do a brief background of the independents. They are not a political territorial organization; rather, they are a group consisting of 12 autonomous First Nations within Ontario. This includes Six Nations of the Grand River Territory, Big Trout Lake, Mohawks of Akwesasne, Bkejwanong Territory, Shoal Lake Number 39, Wabaseemoong First Nations, Whitesand First Nations, Lake Nipigon, Chippewas of Nawash Unceded, Chippewas of Saugeen First Nation, Shawanaga First Nation and Temagami First Nations.

**The Chair:** Sorry to interrupt. Can you just back off a little from the mike? It's for recording purposes.

**Ms. Maracle:** Combined, the membership of these nations is just over 45,000 First Nations people. A large component of this is First Nations youth. The Independent First Nations, as the name suggests, are independent and have entered into a protocol in which they agree to respect each other's autonomy while working together on issues of common concern. Most often, the approach independents take is varied and very diverse, as we have Haudenosaunee members, Oji-Cree and Anishinabek nations that comprise the group. Therefore, it's difficult to come with one common position as it relates to a subject of this nature. However, most of the leadership view our children as our most valuable asset, so they are paramount in the minds of our leadership.

Recognizing this, in 2005 the Independent First Nations struck the Independent First Nations Youth Working Group, the IFNYWG, to identify the concerns, issues and barriers of First Nations youth in these communities and what they are currently experiencing. We are to voice these concerns to the IFN leadership. As the primary representative myself, I am responsible for sitting with the Ontario First Nations Young Peoples Council as one of the 10 members on this board. I was elected by OFNYPC to be their female youth rep to the Assembly of First Nations. In July 2006 I was elected by the AFNNYC to be their female co-chair. Currently, I sit on the child welfare portfolio, special initiative housing, and I'm a member on economic development and international affairs.

Going into Bill 165, we believe that Bill 165 has been developed as a means to establish a child and youth advocate and advocacy office that will now act independently of the Ministry of Children and Youth Services. In this new bill, it states that the children and youth advocate will not act as an advocate to all children but will only act as an advocate on behalf of those children

who are currently in government care. By assisting only those who are currently in the Ontario child care system, we are ignoring the voices and concerns of other children who require support. This new bill will neglect children who are in need of prevention strategies and require assistance in advance of being placed in care. Also, additional prevention measures must be taken in order to ensure that more children are not being placed into care as a result of having these minimal support networks and early advocacy efforts made on their behalf.

This bill also indicates that the child and youth advocate will not be responsible for helping kids in schools for the deaf or blind, or those on probation or in police custody. Currently, this role is being fulfilled by the child and youth advocate, but Bill 165 will remove children and youth in these categories from the current workload of the advocate.

Bill 165 also indicates that different laws will be designed to protect children who will not be met under this bill. I have a series of questions pertaining to this. My main question is, which laws? Do these laws provide adequate or equal representation for the children who will not be represented under Bill 165? Are these laws already in place, so that the children who aren't represented under this bill will be cared for immediately when this bill is enacted, or will they have to wait for more legislation to be developed that pertains specifically to them in order to receive advocacy support?

This bill also states that the child and youth advocate won't be able to advocate for kids with complex special needs. Many of these children who are currently in care are in need of a variety of services such as special needs, educational support, counselling, and anger management, among a variety of other issues. I was curious about how these situations will be clarified before the bill is actually implemented.

If it's not considered adequate for special-needs children to receive service from this one individual, this one advocate, then I'm having a hard time understanding why it's acceptable for the rest of our children in the child care system to only have one individual representing them to the Legislative Assembly. I would also have to ask what laws are already in place—what legislation or bills have already been developed—to ensure that children who aren't represented under this bill are receiving special-needs services or assistance beyond the bill.

Also through this bill, it has been determined that the advocate will serve First Nations children under the same agreement. There will be no special treatment for any one group of children, and they will be equally represented by this advocate. However, I'd have to ask if this is a logical approach to take, considering we are all aware that First Nations youth face very different circumstances and lifestyles than the general public.

I'm sorry, but I just have this series of questions that need to be clarified before I'd even be comfortable saying I support this bill:

—Is this advocate going to be culturally sensitive to children or youth?

—Are they aware of the diversity that exists within First Nations across Ontario?

—Does this mean that the legislation that's developed to deal with preventing child apprehensions will also be equal, in a sense?

—Is the legislation that currently exists pertaining to First Nations people, such as the 1985 Child and Family Services Act and provisions under part X, or Bill 210 and the 1965 child welfare agreements, terms and conditions—are they going to be protected as a result of this bill being implemented?

A series of work has already been done with the government pertaining to Bill 210 and First Nations children, and I don't want to see any back-peddalling happening as a result of this bill being implemented.

**1810**

Also, a large percentage of the 27,000 who have currently been identified in government care are of First Nations ancestry, and there's obviously a need for change in the system. There is a massive overrepresentation of First Nations kids in the corrections system and in government care. It's obvious that this system isn't working, and it's becoming increasingly evident that, due to the ever-growing number of First Nations youth in care, an alternate system needs to be implemented.

There is a need to take a more focused approach to those who display an increased demand for services. First Nations youth are the fastest-growing demographic in Canada, and it is time to address this issue effectively before we begin to see ever-greater increases in the number of First Nations youth in government care. At a bare minimum, I believe that First Nations youth should have their own department and/or their own advocate who will address the concerns of First Nations youth. This will also assist in the shared workload of the advocates, and will allow for greater success in advocacy for both First Nations and mainstream youth.

First Nations youth should definitely have a separate body that deals specifically with their issues. There should be the development of both northern and southern branches dealing with First Nations communities or the development of an overall branch that will deal with advocacy for First Nations youth in care. Since First Nations children account for such a large percentage of the youth in care and have their own specific needs, it would be mandatory that we need our own branch to deal with occurring issues.

We also want to develop bodies that can and will completely represent the needs and concerns of First Nations youth in Ontario. First Nations people are a very unique and very important aspect of Canadian society. We have been assimilated throughout our history, and we don't need another process that just groups us with everyone else. We're going to neglect the true needs and concerns of First Nations children and youth if this process continues like this. It also hinders our ability as First Nations people to govern our own affairs and have some kind of say over our children and what happens with them.

I believe that all children should have access to an advocate: someone who is specifically geared to their needs. Nobody should be excluded from this process because they haven't yet found their way into the system. I wouldn't encourage an arrangement that allows other families to become part of the issue due to lack of early intervention and advocacy for these at-risk families.

If the advocate is going to be solely responsible for only those kids in care, I would demand to see other legislation that pertains outside of those children who fall under Bill 165 and the job description of the child and youth advocate.

**The Chair:** Thank you for that presentation, Sasha. We have about one minute per party, starting with the Conservative Party.

**Ms. MacLeod:** You done good, kid; you did really well. I hate to disappoint you, because you did so well, but unfortunately the answer to most of the questions you asked for a yes or no answer to is no. Unfortunately, there are kids who are going to be excluded from this piece of legislation. Unfortunately, right now this piece of legislation does not include a deputy advocate for aboriginal children. Unfortunately, there is no other legislation that would protect these kids.

But I just want to say something to you, young lady. You came in here today with some ideas that some pretty high-priced people in this province came in with on their own. To do this by yourself in front of a lot of suits and on TV, you did pretty good. I want to read this to you. It came from a lawyer from downtown Toronto: "On a general level, if it were up to me, I hoped to see an Ontario children's bill of rights with the children's advocate acting as the oversight for implementation of a government-wide commitment to the protection of our children." If I had it in front of me, I would read Judy Finlay's submission—she's the current chief advocate, who indicated to us that she believes there needs to be a deputy advocate responsible for aboriginal children, and you came up with that. You and your organization need to be applauded for coming here today with a well-thought-out dissertation on this piece of legislation. I just want to applaud you. Thank you very much.

**The Chair:** Thank you. We'll move on to the NDP.

**Ms. Horwath:** I want to thank you for having the courage to come here and sit by yourself and explain to us all of the concerns that you have. I think you've touched on some of the issues that I have spoken to as well already in regard to this bill, particularly overrepresentation of First Nations children in our child welfare system and in, unfortunately, the youth criminal justice system and the criminal justice system, and the fact that we need to deal with the systemic problems, the system problems, that make that happen.

If this all goes well and we get an independent child advocate, the good news is that that person is charged with looking at the systems and identifying what's failing our kids in the systems that we have already. So I think there's some hope there, but I agree with you wholeheartedly. I have been pushing for, and will continue to

push for, the inclusion of either a deputy advocate or an advocate responsible for First Nations communities who is from those First Nations communities and is able to appropriately meet the needs of kids from First Nations communities. It's extremely important, and I'm glad you've reinforced it today. Thank you.

**The Chair:** We'll move on to the Liberal Party.

**Mrs. Van Bommel:** I also want to add my thanks to you for coming in. I think certainly one of the reasons that we do public hearings is because we need to hear from people like yourself. We go into a process of clause-by-clause where we do amendments, and I think you've given us all an opportunity to give some serious thought to those types of amendments. Thank you very much.

**Ms. MacLeod:** Mr. Chair, just quickly, our presenter asked several questions today. Could we take it upon this committee to have those questions answered to send to her, or at least direct the minister's office to respond to her?

**The Chair:** You can ask the minister. I don't know if that has to be put to a motion or not. You can ask.

**Mr. Zimmer:** I spoke to this this morning. The committee hears from witnesses, it goes down in Hansard, and Hansard goes to the minister. But the committee doesn't direct people, ministers or deputy ministers, to respond.

**Ms. MacLeod:** It just seems to me that this has been an abysmal disappointment as a process for a bill that's dealing with children and youth. We've got a young lady before us who has asked several questions pertaining to this piece of legislation which will impact her generation. If we're unprepared to provide her with the answers that she deserves, then we have failed in this process. I think that we have to, as a committee, take a leadership role.

**Ms. Maracle:** Thank you very much.

**The Chair:** Thank you. There are two options that you have, Ms. MacLeod. You can ask those questions of the minister by getting a copy of the transcript, or you can put a motion forward. I would say that if you want to put the motion forward, it would be up to the committee to decide whether or not to have a letter sent to the minister from the committee.

**Ms. MacLeod:** I move that the committee draft a letter, including the transcripts, to the minister for her response to this young lady.

**The Chair:** Any discussion?

**Ms. Horwath:** I'll second that.

**Mr. Zimmer:** That's something that happens through the public service, for a minister to answer questions.

**The Chair:** It's just a request; that's all it is.

Any further discussion or debate? We know what the motion is. All those in favour? Opposed? It does not carry.

**Ms. Maracle:** I'm sorry. May I ask another question, then? How would I go about—

*Interjections.*

**The Chair:** I'm under a lot of pressure from the members here to keep—

**Ms. MacLeod:** She and I will draft a joint letter, with your transcripts, to the minister, and we'll see if we get a response. Don't hold your breath.

**Ms. Maracle:** Thank you.

**The Chair:** I was wondering, then—thank you very much. You're here on behalf of the Ontario First Nations Young Peoples Council?

**Ms. Maracle:** Yes.

**The Chair:** Okay, thank you. And as far as the Chiefs of Ontario Youth Group?

**Ms. Maracle:** That is the Chiefs of Ontario Youth Group.

1820

**The Chair:** It's the same. Okay. Thank you.

Those are all the deputations listed here, but, members of committee, I have one quick question. There is a person present today who is on for tomorrow, but she flew in today and has been present all day. She is with the First Nations Child and Family Caring Society of Canada. Her name is Cindy Blackstock, executive director, and I see her there smiling in the second row. She thought she was to be heard today, not tomorrow. With the committee's consent, can we give her 15 minutes? Is that okay?

**Ms. MacLeod:** I'm fine with that.

**The Chair:** Thank you. This will be the last deputation of the day, and it means one less deputation tomorrow.

#### FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

**Ms. Cindy Blackstock:** Thank you, committee members. I apologize for the mix-up in the day.

This is the province with the highest population of First Nations people in the country. It also is the province with the highest rate of increase of First Nations children in care in the country, by a factor twice the national rate. Between the years 1995 and 2001, the rate of First Nations children going into child welfare care in this province saw a 164% increase. The national average was 71.5%. This province is also home to the fewest First Nations child welfare agencies of any province in the country, with the exception of Newfoundland and Prince Edward Island. There have been very few examples of provincial governments who have been less supportive of First Nations communities in child welfare than the province of Ontario has.

I'm here with a national organization that provides research and policy support to First Nations. We're not a representative organization. Our words that I'm about to offer are really to be considered a backdrop to the more important opinions that will be offered by Ontario First Nations and by our talented policy-makers, both young and old, an example of whom you just heard from.

I'm going to make three submissions to you regarding the child and youth advocate. The first is that the issues with regard to First Nations, the breaches of their child rights, are so egregious and unique that a mainstream system would be unable to respond to them adequately.

The second is that although First Nations children experience egregious rights violations to a degree not experienced by other people, and this of course has been recognized by UNICEF Canada, the United Nations and, at various points, the government of Canada itself, they actually have less access to rights redress systems than any other Canadian, and I'll get into detailing what that is. Finally, I'm going to sum up with some recommendations about going forward.

The first is really about the rights violations: Why are they unique? Why do we need a First Nations officer at all?

Of course, you've heard from Sasha and from others about the difficulties with First Nations. I think one of the most important things to keep in mind, or something I remind myself, is that we're fighting for rights that are most often realized by other Canadians. For example, one in every six First Nations does not even have safe water to drink. That's something that we've normalized in this country. You can live three days, as a child, without water. Yet we have First Nations communities that are so poorly funded by the federal government—and the provincial government stands at the sidelines—that children are not even given the right to life. We, as a nation, stood up in an uproar when Vancouver experienced some turbulent water back in early February, closing down a Starbucks chain for a week, but for many people this is a daily struggle to retain even basic dignities. So our rights discussion begins with clean water. It begins with adequate housing for children. It begins with having the right to food. And then we move on to other things about the right to be heard.

The other piece is that we find ourselves at an intersection between two governments: the government of Canada and the government of Ontario. That creates some unique rights violations that happen with jurisdictional disputes where children are caught between these governments as they decide who should pay for what. That happened with regard to Jordan's Principle, which you can read more about here. But we have found in our national research that it is a regular occurrence that First Nations children are denied or delayed receipt of services because of jurisdictional disputes between the federal and provincial governments.

Now, what does this mean for a child advocate? Well, if the child advocate only has the power to intervene in cases regarding the provincial government, with no protocol with the federal government, they are unable to intercede in some of the biggest rights violations facing indigenous children in this country.

The other piece it's important to mention is where this also manifests is with this idea of inequitable rights violation redress systems. As a child in Ontario, if I had a rights violation, I could go to the child and youth advocate, and they would have the power over the provincial government to provide meaningful recommendations. I could go to the Ombudsman. I could go to the Auditor General. I could go to the Human Rights Commission. But if you're a First Nations child on-reserve, none of those bodies have any jurisdiction over the federal gov-

ernment. So your option is to go to court. And 53% of aboriginal children live below the poverty line and have no access to that type of dispute resolution mechanism.

Not only are these kids experiencing the most egregious rights violations; the voice and access to meaningful bodies to be able to speak up on their behalf have been taken from them. So when we look at the child and youth advocate, there's a number of key things that need to happen. One is that in this province there has not been the type of prioritizing of the rights violations of First Nations children that there should be, given the circumstances. In my view, this has been an issue that at best has filled the back chapters of committee report, and has been a consideration that has not been acted on with the severity of the rights violations that have been documented time and time again by different researchers.

The other piece is that the jurisdiction of the advocate's office needs to bridge the two levels of government—the provincial government and with protocols with the federal government—because as you all know all too well, there is no ombudsman for the federal government and there is no child advocate for the federal government. And the Human Rights Act exempts anything to do with the Indian Act.

So without something at the provincial level, these children's voices and the rights violations that may result from federal government policy simply go unheard. The way to get at that is really, I think, to prioritize a First Nations-controlled child advocate's office here in Ontario where First Nations from Ontario take the lead in design of that mechanism.

Some people would say that that seems to be too much. But I would say to you that given the rights violations and the lack of redress and progress in restoring those, there is very little argument to say that the current system or enveloping this package within a mainstream framework would be successful.

The other is that this child advocate needs to have the obligation to make binding recommendations on government. There has been a huge gulf between the rights as documented in law, legislation and policy for First Nations children and the realization of those rights. Without teeth, this child advocate will be able to do nothing more than make the best recommendations possible, but the governments will be at their whim to either ignore those recommendations or to take them up. Of course, we know from the province of Quebec that the child advocate is able to make binding recommendations on the provincial government.

The other, final thing is that far too often, and maybe it is because for most Canadians their basic rights have already been realized, rights redress systems have been individual in nature. If my rights are violated as an individual, I can therefore file an action. But the case history of policy, both provincial and federal government in Ontario, regarding First Nations is that these rights violations are systemic. They don't affect just one child; they affect thousands of children. It is critical that the child and youth advocate in Ontario have the ability to address these types of rights violations.

It is unacceptable, in a country like Canada, that only 0.5% of non-aboriginal children are in care versus 10.23% of status Indian children. There has never been a time in this country when there have been more kids in child welfare care than at this moment as we sit here, including during residential schools.

I have provided a written brief and I would encourage you to really embrace the submissions coming forward by the Ontario First Nations regarding this important matter. I thank you for your time.

**The Chair:** There's about two minutes per party. We'll start with the NDP.

**Ms. Horwath:** I'm sure you've listened to as many of the deputations as you were able to hear since you arrived. There has certainly been the idea discussed about the possibility of either a co-advocate or a deputy advocate or a separate piece to address First Nations communities particularly, considering the cultural issues that need to be addressed as well as the statistics, which are horrifying, that you've raised with us yet again. Is that something you support? Do you see that as being a step in the right direction, as something you would advocate for?

1830

**Ms. Blackstock:** My first preference would be one that actually is a separate body managed and controlled by the Ontario First Nations. We have seen other efforts to create deputy directors. But I think it's important that you understand that that's a subsidiary type of position.

**Ms. Horwath:** No, I understand. That's why I said "co."

**Ms. Blackstock:** There are some compromises there. The other option too for the committee to consider is the New Zealand model, where they actually have a Maori woman who's the commissioner for all children in the country of New Zealand. I think that would be a wonderful statement on behalf of the government of Ontario, to appoint a First Nations, Metis or Inuit person to oversee the well-being not only of First Nations, Inuit and Metis children, but of all children in Ontario. I think sometimes we default to think that the child and youth advocate who would be the non-aboriginal deputy would be someone who would be non-aboriginal. I think we need to move to a place where we really embrace the ability and capability of First Nations folks to make a contribution to all children in Ontario.

**The Chair:** Thank you. We'll go to the Liberal Party.

**Mrs. Van Bommel:** Thank you very much. You've given us a lot to think about. I think for me the stumbling block constantly on the issue of First Nations children is that jurisdictional argument. You talk about having a child advocate for First Nations, but how do we make—so many of the things that happen in the bands in my riding are jurisdictional things. I talk to the chiefs, and there are things I can do from the provincial aspect, but there's always that federal thing. I don't know how to make certain things binding on the federal government. What are your suggestions on that?

**Ms. Blackstock:** I think one of the most important things is to acknowledge that Ontario child welfare

'legislation applies to every child in Ontario. It doesn't say that the legislation applies only if the Department of Indian Affairs or the federal government meets its obligations, and yet in real life that's how we treat it. We only provide the services if the federal government steps up to the table. In my view, that's a breach of the child welfare legislation.

What we've done is we've created nationally a principle called Jordan's Principle, which would say that in those issues of jurisdictional dispute we are going to act in a way that best represents the values of our nation—our fundamental commitment to freedom, equality and dignity and our high value for children—in that, when a jurisdictional dispute develops around services that are otherwise available to other Canadian children, the government of first contact pays the bill and then they figure out the jurisdictional dispute later. It's a child-first policy. It's consistent with the Charter of Rights and Freedoms. It's consistent with the Ontario child welfare act. I can see no reason why we wouldn't implement it. Our agency has costed it out. It would be a cost-neutral strategy for all provincial and federal governments to implement.

**The Chair:** Thank you. Finally, to the Progressive Conservatives.

**Ms. MacLeod:** Thank you, Mr. Chair. I guess I'm last but not least.

I want to say thank you very much for being patient today and for waiting to give us your deputation right now.

I want to really say I appreciate your final comments with respect to children's welfare. What the members opposite don't seem to understand—and they didn't when something happened down in my neck of the woods in eastern Ontario—and it was not with First Nations kids; it was children of military men and women at the Phoenix Centre in Petawawa. This government wanted to abdicate its authority because it didn't have the jurisdiction. Of course, they weren't the ones sending the parents to Afghanistan, so therefore they shouldn't have to provide the mental health services for these kids. That's not the right way to think when you're looking at children and youth in this province. So I just wanted to say I appreciated your comments.

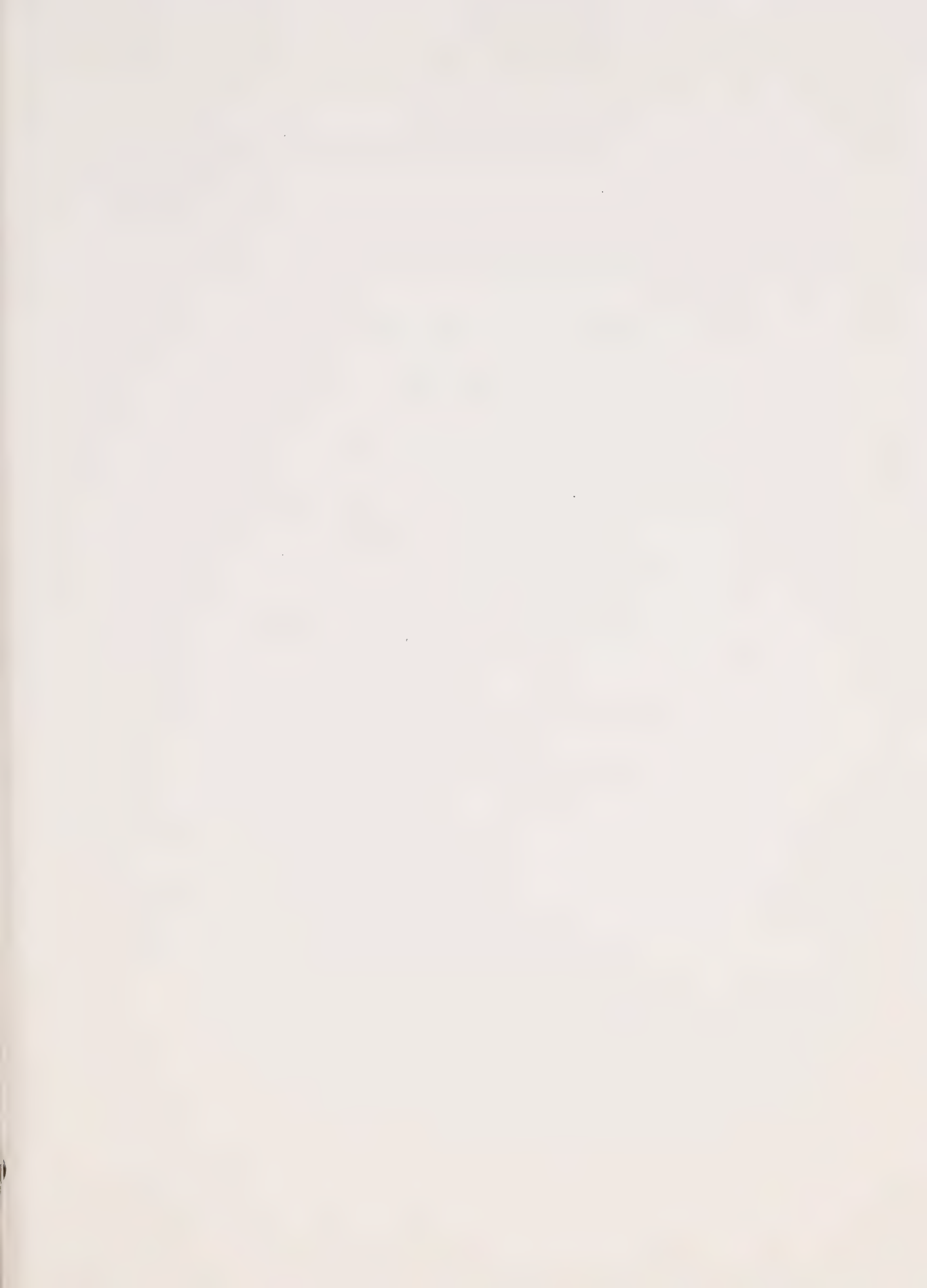
Although it was a different experience, I think you hit the nail on the head. If these are children and youth in the province of Ontario, it is the government of Ontario that has to make sure that they are protecting those children in the child welfare system and the children's mental health system. I appreciated your comments, obviously. We've talked a lot about how we should best serve our aboriginal children in Ontario, and I appreciate your comments. I just wanted to add that, say thank you, and obviously thank the committee for allowing you to speak.

**Ms. Blackstock:** Thank you very much.

**The Chair:** Thank you for your presentation.

We stand adjourned, committee, until tomorrow at 9 a.m., but we're in room 228.

*The committee adjourned at 1835.*





*Continued from overleaf*

Ontario First Nations Young Peoples Council .....	JP-1175
Ms. Sasha Maracle	
First Nations Child and Family Caring Society of Canada .....	JP-1178
Ms. Cindy Blackstock	

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# CONTENTS

Wednesday 25 April 2007

<b>Subcommittee report</b> .....	JP-1131
<b>Provincial Advocate for Children and Youth Act, 2007, Bill 165, <i>Mrs. Chambers /</i></b> <b>Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes,</b> <b>projet de loi 165, <i>M<sup>me</sup> Chambers</i></b> .....	JP-1131
Ministry of Children and Youth Services.....	JP-1132
Ms. Judy Finlay, chief advocate, Office of Child and Family Service Advocacy	
Mr. Les Horne .....	JP-1135
Canadian Hearing Society, Toronto .....	JP-1138
Mr. Gary Malkowski	
Concerned Citizens Against Child Pornography .....	JP-1142
Ms. Judy Nuttall	
Dr. Patricia Spindel .....	JP-1144
Justice for Children and Youth .....	JP-1147
Ms. Cheryl Milne	
Pro Bono Law Ontario, Child Advocacy Project .....	JP-1149
Mr. Greg Richards	
Ms. Wendy Miller	
Ms. Anne Marsden .....	JP-1151
Psychiatric Patient Advocate Office .....	JP-1153
Mr. David Simpson	
Children's Mental Health Ontario / Office of Child and Family Service Advocacy .....	JP-1155
Ms. Cathy Dyer	
Mr. Irwin Elman	
Mr. Michael Cochrane .....	JP-1157
Toronto Parent Network .....	JP-1158
Mr. Cassie Bell	
ASL Services for Deaf Children in Ontario .....	JP-1159
Mr. Chris Kenopic	
Ms. Sandra Tanny .....	JP-1162
Mr. Lawrence Kong .....	JP-1163
Youth in Care, London and Middlesex Children's Aid Society .....	JP-1164
Kat	
Paul	
Erica	
Residential Placement Advisory Committee, Family Service Windsor-Essex County.....	JP-1167
Mr. Paul Daignault	
Mnaasged Child and Family Services.....	JP-1169
Ms. Carrie Tabobondung	
BLOCK Headz .....	JP-1172
Mr. Paul Green	
Mr. Boonaa Mohammed	
Mr. Kimani La Qua	
Hassan	

*Continued overleaf*



## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 26 April 2007

# Journal des débats (Hansard)

Jeudi 26 avril 2007

## Standing committee on justice policy

Provincial Advocate for  
Children and Youth Act, 2007

## Comité permanent de la justice

Loi de 2007 sur l'intervenant  
provincial en faveur des enfants  
et des jeunes

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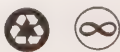
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 26 April 2007

Jeudi 26 avril 2007

*The committee met at 0905 in room 228.*PROVINCIAL ADVOCATE FOR  
CHILDREN AND YOUTH ACT, 2007  
LOI DE 2007 SUR L'INTERVENANT  
PROVINCIAL EN FAVEUR DES ENFANTS  
ET DES JEUNES

Consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth / Projet de loi 165, Loi visant à créer la charge d'intervenant provincial en faveur des enfants et des jeunes et à y pourvoir.

**The Chair (Mr. Lorenzo Berardinetti):** I'd like to call the meeting of the standing committee on justice policy to order. Could everyone please take a seat. I'd like to welcome you all here. Good morning. If those in the back can get a seat, we can begin.

**Ms. Andrea Horwath (Hamilton East):** I'm wondering if we can move the screen temporarily. I know it may be a little bit of trouble, but the bottom line is that there are kids in the back who can't see what's going on here, and I really think it would be appropriate if we let the children who have bothered to come here watch the proceedings as much as possible.

**Ms. Lisa MacLeod (Nepean—Carleton):** The Progressive Conservative Party supports that.

In any event, yesterday, when we had members of the deaf community here, I had requested that the committee look into providing some ASL on the website, whether it was through transcripts or the bill. I've been advised by the clerk that we can only proceed by asking the minister to provide this material in ASL. I'm requesting that the committee—and if I have to, I will move a motion—ask the minister to provide at least the bill in ASL. I'm requesting the indulgence of this committee to agree to that so that we can have greater access to this piece of legislation.

**The Chair:** I will try my very best to speak to the minister to get that as soon as possible.

**Ms. MacLeod:** Thank you.

POPLAR ROAD JUNIOR PUBLIC SCHOOL  
CHILDREN'S ADVISORY GROUP

**The Chair:** Our first deputation this morning is from Poplar Road Junior Public School Children's Advisory Group. Good morning. How are you?

**Danielle:** I'm good.

**The Chair:** That's good. I'm the Chairman. My name is Lorenzo. You don't need to be afraid. We're just here to listen to you. If you want some water, there's some water there. We couldn't bring any pop in here because we're not allowed to. Go ahead and introduce yourself and then you can speak for a bit.

**Danielle:** Hello. My name is Danielle. I'm 11 years old. This is my grade 6 class. I've come today to talk about Bill 165 and also about why I think kids should have a voice in creating laws about children.

Let's say a kid's law is established but kids don't agree with that law or it doesn't make any sense to them at all—for example, the government sometimes makes laws about the native children of Canada going to settlements—they should have more say and more rights about what happens to them.

Some adults don't give kids enough credit. They don't think kids are smart enough. They think we don't care about things like this, but look at me, Deneisha, G'lysa and my class. We are all here today, and we are all trying to have a voice.

I work in the advocate's office with Deneisha and G'lysa. We are doing something. There are lots of other kids just like us who care about other kids' voices, too. I volunteer at the advocacy office because I want to help. We are part of a group called Team Alligator. This is a group of kids aged nine to 12 who create and edit a newsletter dealing with children's rights and about why kids have a voice and other issues dealing with children. I do this because I want kids to know they have rights and because there are many kids out there who don't know they have rights.

I think that the advocacy office should become independent so they that have more control. The government is watching their every move, and it's hard for them to advocate. If one of the advocates thinks that they should do something and the government disagrees, then what can they do? The office should become independent so that the advocates are better able to do their job. That's what they're there for. They help kids have a voice, and I'm here today to say thank you to them for giving me a voice through the Alligator and for helping me be able to come here today.

Now please listen to what my class has to say. I want you to hear their voices, too.

**Miranda:** My name is Miranda. My voice is important because I can have a choice and tell people what I want to do and don't want to do in any situation.

**Zachary:** My name is Zachary. My voice should be heard because if I didn't have a voice, I couldn't agree to do anything.

**Shawn:** I'm Shawn. My voice is important to me because it allows me to communicate with others and make friends.

**Matthew:** My name is Matthew. My voice is important because I can call for help if I am in danger and I can also tell someone to stop.

0910

**Jessie:** My name is Jessie. My voice is important because, without it, I wouldn't be able to ask questions and learn from them.

**Kezia:** My name is Kezia. My voice is important because I might have something to say and I should be able to make people listen.

**Kristen:** I'm Kristen. My voice is important because I can speak through my voice. Thank you for listening to my voice.

**Jack:** I'm Jack. My voice is important because if I didn't have a voice, no one would know who I am and what I want to do.

**Jordan:** I'm Jordan. My voice is important because it allows me to stand up for others. If someone's being bullied, then I need my voice to help them.

**Michael (1):** My name is Michael. My voice is important so that I can help others and ask for help when I need it.

**Emily (1):** My name is Emily. My voice is important because if I didn't have one, I wouldn't have any friends to talk to when I had a problem.

**Kaitlin:** My name is Kaitlin. If I didn't have a voice, no one would know how I feel about anything.

**Jaya:** My name is Jaya. My voice is important because it lets me express my feelings.

**Sydney:** My name is Sydney. My voice is important because, without it, I wouldn't be able to share my knowledge with others.

**Michael (2):** My name is Michael. My voice is important because if I didn't have a voice and something was wrong, how would anyone know?

**John:** My name is John. My voice is important because, without it, I wouldn't be able to give my opinion.

**Abbey:** My name is Abbey. My voice is important because if I did not have a voice, I would not be able to say my opinions. I think that all children should be respected and children should feel just as important as adults.

**Joelle:** I'm Joelle. I think that my voice is important because it gives me the ability to say no. I can defend myself.

**Jaimie:** My name is Jaimie. My voice is important because it gives me the ability to express my thoughts and feelings to others.

**Peter:** My name is Peter. My voice is important to me because if I need something, I need to express myself to get it.

**Emily (2):** My name is Emily. My voice is important because it separates me from everyone else.

**Rhiannon:** My name is Rhiannon. My voice is important because it allows me to have choices.

**Ashley:** My name is Ashley. My voice is important because it allows me to express myself to let somebody know if I'm happy or sad.

**Cody:** My name is Cody. My voice is important because I can solve a problem throughout my community.

**Jackson:** My name is Jackson. My voice is important because I think that people should hear what I have to say about what is going on around me.

**Elaine:** My name is Elaine. I feel that children's voices are important because through their voices, they learn and teach others what they know. I also feel that children's voices are important because only they know what they're feeling inside, and without their voice, how are they to let us know what that is?

**Danielle:** This is Deneisha. She would like to say a word or two.

**Deneisha:** My name is Deneisha. I go to Jesse Ketchum public school in the city of Toronto. Today I'm going to talk to you about Bill 165.

First of all, I would like to thank you all for inviting me today and giving me the chance to speak.

In my opinion, I think that children should have a group where they can express their opinions and issues, because I believe that children have a right to make their voice available to the public and for it to be heard.

I, myself, work with children at the advocacy group in order to create a newsletter for other youth ages 8 and up. This newsletter gives me and my other group members a chance to be heard.

As an example, I think that poverty is wrong and that we should get everybody off the streets because everybody wants to be noticed and not feel like they do not mean anything to society, but most importantly, so that they have shelter and food, and when I addressed this issue with my advocacy group, my voice was heard. I might be writing an article in the next newsletter.

I would like other children to have this experience of their voice being heard by the public.

Also, we work with a children's group in Thunder Bay. They liked the idea of a newsletter for children, so they have decided to make their own and are now called the Thunder Bay Alligators.

This is to show that different kids around Canada have opinions about issues in the world.

**The Chair:** Thank you.

**Danielle:** Thank you for hearing us today. I hope you listened and heard that we do care. We do need your help and that all kids in Canada have a stronger voice. Again, thank you.

**The Chair:** Thank you. That was a very nice presentation. We started at 9:05. My watch now says 9:15, so

there's about five minutes for questions from the different parties. We'll start with the Conservative Party.

**Ms. MacLeod:** That was probably one of the best presentations we've seen in two days. You guys did a very, very good job and I appreciate your coming.

I want to know a little bit more about the Alligators newsletter and how we might be able to get that right across Ontario, so that kids throughout the whole education system can learn about the independent child advocate. I want your ideas on how to do that. Do you guys think you can answer me? Do you have some ideas for us?

**Danielle:** The newsletter is basically for kids from Thunder Bay and some camps and foster homes. They bring in pictures or we get pictures sent or we go and get some pictures. We basically put in articles for adults to know about children's rights, but we also do it for children. We have pictures from other children that send in their pictures. We also have a place in the newsletter called the Kids Zone, and it's actually a crossword, and we have a little comic strip. But the reason it's called the Alligators is because the alligator is our mascot.

**Deneisha:** Mostly the reason that we made this newsletter is to address children to know that they have their rights and that their voices can be heard in the society.

**The Chair:** Thank you. I think we need to move on, then, to the NDP. So we'll ask Andrea Horwath, NDP.

**Ms. Horwath:** Thank you both for taking a leadership role and helping the rest of your classmates as well. I want to thank you all for coming and having your voices heard. It was extremely important for us to keep in mind always what this bill, Bill 165, is about. It's not about any of us. It's all about you and it's all about other kids and other young people. So we really appreciate starting our day with your voices. I think it reminds us how we need to keep your voices, that you all gave to us today, in mind as we go through the rest of the work on this bill.

I want to ask, if I can, how many kids get the Alligators publication? How many kids get your newsletter at this point? Do you know?

**Danielle:** We finished the first one a little while ago but we haven't exactly had a chance to get it out yet. Probably maybe about 2,000 so far.

**Ms. Horwath:** Wow, that's excellent. Congratulations on your first edition. If there's anything that we can do to help you to get that out to more kids and more communities—I'm sure you know that we all represent a thing called a riding. There are 103 ridings in the province of Ontario. Maybe some of the MPPs would like to help with getting your newsletter out as well. I would certainly offer to do that. I come from a city called Hamilton, just down the highway. I'm offering my help to get your newsletter out into some of my schools, if I can do that.

**The Chair:** We'll move on now to the Liberal Party.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you very much for coming. I really appreciate hearing from all of you. I know all of my colleagues

do. Your voice is important to us. I know that, just from what I've heard about your newsletter, you're probably trying very hard to give a voice to those children who don't have a voice. I'm just really pleased that you've been able to start our day like this and, as Andrea said, anything that we can do to encourage children in our own communities to do this kind of newsletter for themselves and create a voice for themselves is great.

**0920**

If you can let us have a few copies of this, I'd really like to be able to just show it to the children in my schools so that they can make one of their own. I have a very rural riding and we have a very unique way of doing things. I know the children in my community would be able to write stories about themselves and give themselves a voice too. So thank you very much for coming this morning.

**The Chair:** Just one quick question: Where is Poplar Road school located? Is it in Scarborough?

**Danielle:** Yes, it's in Scarborough.

**The Chair:** Okay, very good. A few of us are from Scarborough too. Thank you very much for coming out today. We're going to hear from other people now, but we appreciate your presentation and we hope you have a very nice day. Thanks for your presentation.

#### PAUL DAGENAIIS

**The Chair:** Members of the committee, our next deputation is a teleconference, and it's Paul Dagenais. I don't know if Paul Dagenais is there or if I've pronounced the name properly.

**Mr. Paul Dagenais:** You're pretty close.

**The Chair:** I'm at that stage where I need reading glasses. Good morning, Mr. Dagenais.

**Mr. Dagenais:** Good morning. I really appreciate—how would I put this in laymen's terms?—this kick at the can because this is so important to me.

I only recently learned about Bill 165. Not even two weeks ago I saw a notification in the newspaper, and I was elated. Unfortunately, I want to become more elated, and that may happen if you take what I have under consideration.

I want to illustrate as briefly as possible what happened to my daughter, and it's my understanding that this type of situation has cropped up not only here in Ontario but in other provinces. I've spoken to a number of professionals, including Canada's Attorney General. He took the time to speak to me for two hours, as did other MPs at the federal level, Liberal as well as several Conservatives, including, as I said, Mr. Toews, and they would like me to go in front of the Commons justice committee. But that's going to cover just one aspect of what my concerns are about.

Let me cut to the chase. My daughter was a victim of a young sexual predator in school and she was victimized within this system. In other words, she was knowingly left vulnerable. There's a paper trail as long as my arm. What I'm saying is accurate; it's objective and

it's disturbing. What we were told is that the Young Offenders Act is ineffective and weak, so we're not going to bother going after the guy who tried to rape your daughter and left her with several injuries. They allowed this guy to continue going after my daughter for just short of two years. Now he's back, and there's still nothing that we can do about it.

They had teachers who got him off my daughter. He was videotaped trying to sexually—well, he did sexually assault her, attacked her, choked her, everything. Only two entities ever entered the picture and did their job: That was some pretty great doctors—a child psychiatrist, a couple of family physicians and some counsellors—as well as the Ontario compensation board. They didn't do this—I'm sorry?

**The Chair:** Sorry. It's just some feedback.

**Mr. Dagenais:** Sorry. I'm just nervous and I'd like to get all this out as clearly as possible.

They didn't do him any favours by not intervening; they didn't do my daughter, our family nor the taxpayer—because I know what it cost the taxpayer. The comp board cut my daughter a cheque. From what I understand, it's one of the largest ever in the province when there were no arrests or charges or no investigation ever done.

Without going into details, because we'd be here all day, let me put it this way: I sat down with a retired judge, and I'm some of you probably know him, as well as other professionals, and they all came to the same conclusion: that there was a lot of injustice, a lot of bad things that border on evil were done to my daughter—to keep this young gentleman out of the system.

What I'm getting at is, if Bill 165 is going to just help some children, then it doesn't make any sense to me. On the surface, it sounds like a great piece of legislation. But what happens the next time this guy comes after my daughter or somebody else's daughter or someone else comes after somebody else's daughter, and we're told, "The law is weak, so we're not going to bother doing anything"? If it had just been one or two police officers—but it was more.

My daughter was sent to court to get a restraining order by a justice of the peace who said, "I believe you, I praise you, I commend you for your stance, and I'm going to allow you to go to court," and then this gentleman recused himself. But when she got into court, the recused justice of the peace was on the bench and wouldn't allow her to proceed. He only let a former police officer, who happens to be the accused's mother, have her say. We were told to go out and wait out in the hallway for the crown, which we did. The unfortunate thing was that the crown refused to speak to us. She had time to speak to the former police officer, and then she refused to talk to us, saying, "I'm too busy. I don't have time for you. You have an attempted rape." So she had already been sexually molested and assaulted by this guy two months earlier, and you have a justice of the peace who sends her to court, recuses himself and then doesn't

allow her to proceed and who wants the crown to get involved, and the crown refuses to.

I just want to give you one more illustration. Like I said, this guy went on, and no one did anything. When court documents started to disappear and my daughter was being left vulnerable, the crown's offer was, "We'll send you to mediation," and I was told later by several prominent people, mostly lawyers and a retired judge, that they had no business ever doing that. She was told, "Just come in and give a statement to a court official." It was arranged by the crown, and she wasn't allowed to have a lawyer or a parent present. When she got there, these court officials had one parent of the accused, an ex-cop, stand at the door while they put my daughter in a room with the guy who assaulted her, and they literally coerced her into signing an agreement that said that nothing had ever happened and that it was simply all a misunderstanding.

I could go on, but I'm too nervous to get this out. I think you get the picture. If anybody ever wants to see the paper trail, they're welcome to it. Fifteen, 16, 17 different professionals have seen it, and they know that there's a problem, and they've always pushed me to talk to politicians to try to get the change. At the provincial level, it has been difficult, and that's why I jumped at this opportunity.

I spoke at a conference recently, here in Ottawa, on victims' rights, and some people listened, ironically, at the federal level, but they weren't concerned about correcting problems when the good guys are part of the problem.

I'm certain that those officers involved, everyone involved, likely gets it right most of the time, but when you know your daughter's life is in danger—and I'm not trying to be dramatic. She could have been killed. That happens when you're being kicked and kneed in the groin repeatedly, when you're choked into submission, when you have your head banged into a steel wall.

I don't want this to happen to anybody. The whole purpose of my daughter and myself continuing to speak up on this subject is to minimize the potential for this to reoccur, for history to repeat itself, and I would love you to consider amending, adding, to Bill 165.

I've always joked that it's like a secondary 911 call. My daughter needed someone, some entity, to act on her behalf. She couldn't turn to children's aid. She couldn't go to legal aid. We're poor. She had no help when she needed it. She was repeatedly left vulnerable to a sexual predator, and like I said, that went on for very close to two years. And has he come back? Yes, he's been back recently. Because they never did anything at the time years ago, he remains a threat, and there's nothing I can do about it. I don't want to ever hear police tell me that the only solution is to arrange an accident.

**0930**

I'm going to stop there if there are any questions. But I'm begging you to listen to me. Some children are left vulnerable in this province. To me it's like pitbull attacks. It doesn't happen every day, but I was happy to

see pitbull legislation passed. I would love this bill to pass and have a right, or whatever you want to call it, added that if any child is in a situation as my daughter was, they should be able to get help. Not "Write us a letter and we'll see what we can do," and then have those letters disappear. "The letter must have been lost in the mail. Can you do it again?" We did. "Do it again, then." And then you send this fax and they deny that they ever received the fax, and yet I have proof sitting in my hand, figuratively. Like I said: paper trail. We're not trying to undo the past. It's too late for that. I don't want it to happen to anybody else. Bill 165 seems to me to be the only solution to make some dent in this type of problem.

**The Chair:** Thank you, Mr. Dagenais. We have just about three or four minutes for a few questions from the different parties—a minute or so per party. We'll start with the New Democratic Party. Mrs. Andrea Horwath.

**Ms. Horwath:** Good morning, Mr. Dagenais. I want to say, first of all, thank you for sharing your horrific experience with us and the pain that obviously your daughter and your entire family had to endure with a system that wasn't listening to her and wasn't responding to her needs.

What I can tell you is that I'm hopeful too that this independent office of the child advocate, once we get this bill amended and in shape to do the most possible good work it can do, will be independent in so far as it will be able to take on what are commonly perceived to be the good guys, who unfortunately are doing not very much good in your situation, obviously. I'm hopeful that the independent office of the child advocate can take on that role. They will take on anybody because they are independent from government, so they're not tied in with some of the structures that kind of banded together to not solve the problem and not address your daughter's situation.

Secondly, I want to say that the important thing, once we have the legislation passed, is to be ever vigilant in being sure that it gets appropriately resourced, because without the resources in the independent office of the child advocate, we will continue to have horrific situations occurring in this province and nothing will be able to be done about it. So not only do we need to get the bill passed and get it whipped into shape so that it has the most positive effect for children, but also we need to make sure that that office is adequately resourced from the moment it opens as an independent office until forever, really.

I want to thank you again for your comments. I know it was difficult for you to share those painful experiences with us but I certainly do appreciate it. Thank you.

**The Chair:** We'll move on to the Liberal Party. Mrs. Maria Van Bommel.

**Mrs. Van Bommel:** Mr. Dagenais, your story is very moving, and I think very upsetting to all of us. None of us want to hear about children being hurt, and especially in the way your daughter has been.

**Mr. Dagenais:** Don't forget, if I could interject for a second, we've been able to get a pretty good estimate as

to what it cost the Ontario taxpayer. If somebody had stepped in at the very beginning, those costs would have been much, much less.

**Mrs. Van Bommel:** I'm sure of that. What we're trying to accomplish here with this bill is to create an independence for the child advocate so that the advocate can work for children like your daughter and do so without interference from government or other agendas. I'm hoping that by the end of the clause-by-clause, we will have a bill that will achieve those kinds of ends. Thank you.

**The Chair:** Thank you. And finally, to the Progressive Conservative Party. Christine Elliott.

**Mrs. Christine Elliott (Whitby-Ajax):** Mr. Dagenais, I too am very sorry for the terrible experience that your daughter has suffered through and the pain that it's caused her and your family.

I'm just wondering if you would be able to clarify: You mentioned that you think that Bill 165 is great in principle but that it should be added to and amended. What I'm sort of hearing, from what you're saying, is that you think it should be more broadly expanded to the types of situations where it can be applied. Am I correct in that assumption?

**Mr. Dagenais:** Yes. I'm not a professional and I'm not aware of everything that's in Bill 165, only the general outline. What I'm looking for is that anyone who finds himself or herself in a similar situation to my daughter's can literally pick up the phone and dial what I joke about, 911A, where a child can have immediate access when the good guys are part of the problem. That's what I want to see: where somebody is going to act on their behalf. If that's not in Bill 165, why help, protect, and have rights for certain children that fall under the care of the Ontario government, but those who are caught in no man's land, between the trenches, are out of luck?

**Mrs. Elliott:** Thank you.

**The Chair:** Thank you very much, Mr. Dagenais, for your presentation today.

## VOICES FOR CHILDREN

**The Chair:** We will now move on to our next presentation, Voices for Children, and Cathy Vine, the executive director. Good morning. Please feel free to have a seat.

**Ms. Cathy Vine:** Good morning. We actually have two of us presenting today from Voices for Children. I'll start by introducing myself and then I'm going to turn this all over to my colleague.

My name is Cathy Vine and I'm the executive director at Voices for Children. First of all, thank you very much for allowing us to come and speak here today. Voices for Children is here to help people from all walks of life bring about an Ontario that actually works for children, that supports their development from the very start and helps young people to be active participants in their own lives. Our goal, very strongly, is to see that every child

has an opportunity and a fair shot at success in this great province.

One of the ways we do that is by championing great ideas, and Bill 165 is such a great idea. What really puts the mettle to the test is how that great idea plays out. This is a bill that was written for children and is intended to help children, but children had no part in the writing of this bill. I can't even begin to imagine what this bill might look like if children had written it. I think we might be looking at something entirely different today.

It's very important for us to consider what it means when children haven't been included in something that actually was intended for them. Because of that, it's very important that children be heard now and it's very important that children become central to this process, to this legislation and to how the advocate's office carries out its work.

What I'd like to do is introduce you to one of my colleagues, Stephanie Ma, who is one young person who did grow up in government care and who can speak today from her experience. What we would ask, for everyone who works so hard at Voices for Children, is for everyone at the committee to think about how this legislation is going to reach every child that comes into the care of the government: the two-year-olds, the four-year-olds, the nine-year-olds, the 15-year-olds. We have someone here to speak today who was 12 when she came into the care of the government.

**Ms. Stephanie Ma:** Hi. Like my colleague Cathy already said, my name is Stephanie Ma, and I'm a former crown ward of the Children's Aid Society of Metropolitan Toronto. I first came into care when I was 12 and I left care when I was 21. My reason for wanting to speak in front of you is to have the opportunity to explain the importance of youth participation and consultation, especially for youth in governmental care.

0940

I will now draw from my experience and talk a little bit about what it was like growing up in the system.

I often felt that things were out of my control. I don't know if any of you are fans of Franz Kafka, the novelist—nobody?

**Mr. Shafiq Qaadri (Etobicoke North):** The Metamorphosis.

**Ms. Ma:** The Metamorphosis, The Trial—yes. That's what it kind of feels like growing up in the system—The Trial. Every complaint or concern I had regarding my custodial care seemed to be met with, "It's not my problem. Talk to your social worker. Talk to so-and-so's boss. Talk to so-and-so's other boss." It's just this never-ending chain of command, this hierarchical top-down model, with youth being at the very bottom.

If this was my experience, imagine 25,000 others feeling the exact same way. How many other children and young people have been made to feel like property and completely disenfranchised, that we can just be moved around or neatly put away—out of sight and out of mind—so that the government can feel like they're doing a good job and the problem's solved?

Like so many others, I will echo the fact that in the creation of this bill, youth were not included as a part of the process. In saying "the process," I don't mean these hearings; I mean at the beginning, at the end, in the middle, everything.

Ultimately, this shows the absolute rigidity of the bureaucratic structure of politics. It's unable to move.

If this bill were to be of any value—and I'm not saying that it isn't of value; it is. This is a huge step. In terms of what youth will feel, though, an independent child advocate would help to assist youth from government care, especially, to find and use their voice, bringing us out of the shadows and into the forefront. After all—and everyone else before me has referred to it—the UN Convention on the Rights of the Child has enshrined this.

Young people, both in care and not, are entirely capable of mobilizing and being a unified, cohesive force. You witnessed that today in the presentations that just happened and yesterday.

The system needs to break those stereotypes of helpless, needy youth. We need assistance, yes, but we also need to feel a part of something, especially youth from government care, who do often feel alienated.

I wish so much that I had known all the information I know now. If I had known all this when I was younger, I can just imagine how empowering it would have been.

Having said that, it's very important for me to mention that, for me, this is not a political issue. Please, I don't want you to politicize this. Although the implementation is embedded in politics, this is an issue about human rights and it's above politics. It's universal, and that's evidenced by the fact that the UN convention was ratified almost universally.

Help to make youth participation integral in all parts of process—beginning, middle and end—on issues that affect them.

**The Chair:** Thank you. We have some time for questions. We have about two minutes per party. We'll begin with the Liberal Party this time. Mr. Zimmer.

**Mr. David Zimmer (Willowdale):** I just have two quick questions.

Did you develop a taste for Franz Kafka while you were in care or after you left care?

**Ms. Ma:** While in care, actually. It was an alternative alternative school, and it was basically a school program that was through children's aid, and the teacher there was a magnificent teacher, and he introduced me to Kafka.

**Mr. Zimmer:** Of course, in the novel, the character can never get answers to anything and everything happens randomly. If he tries to chase down one of these random causes, it just leads to another random cause. So, does this bill, in your view, do anything to eliminate the randomness of things that happen to children?

**Ms. Ma:** I definitely say that it would. Having an independent child advocate would certainly allow the advocate more freedom and would definitely allow the advocate to be a stronger mechanism for young people to get their voices heard. I hope that answers your question.

**The Chair:** A quick question, then.

**Mr. Qadri:** Stephanie, first of all, thank you for coming forward and for your courage. Would you be willing to offer yourself as a guide and/or consultant for us to write the preamble to this bill, so that it could be a statement of purpose involving youth and trying to capture those with that experience? Hopefully, it won't be a Kafka-esque document.

**Ms. Ma:** I would be flattered to have that opportunity, but I think if you wanted to do a greater service, you would ask people who are younger than me, because I have aged out of that whole youth caveat. I think you have a great opportunity to ask many youth who are here presently and others who are coming.

**The Chair:** Thank you. Let's move on to the Progressive Conservative Party. Ms. MacLeod?

**Ms. MacLeod:** It's very nice to see you again, Cathy. Welcome, Stephanie. I've read some of your work before, and I'm very happy that you're here today. It was a great presentation.

I have two questions for you. Having grown up in that system—and I completely agree with you that we should have had children involved not only in the drafting, but we should have been less rigid in how we're holding these hearings. Quickly, how do you think, once this bill is passed—in fact, do you think there needs to be a clause in this piece of legislation that would communicate the independent child advocate in the school system? The other question I have is, do you think we need to enshrine a children's bill of rights in this piece of legislation?

**Ms. Ma:** I have to think about that a little longer. I do think that having a children's bill of rights would be a great idea. I don't know how that would look. I'd have to sit down and think about it a lot longer, like I said; two minutes isn't a lot of time. Sorry, what was the other half of the question?

**Ms. MacLeod:** The other half was, how do we communicate? Do we enshrine in legislation that there should be communications through the education system? I sensed from your presentation that the issue is that you're never getting answers. You're sort of in a labyrinth and you don't know your way out. How do we make sure that kids who are in this system are notified of the existence of the independent child advocate?

**Ms. Ma:** When you said the education system—that would be a great idea. I'm a strong believer in education, and I also strongly believe that education can open doors. Having said that, if you could maybe put something in the school system that talks about the bill, maybe, or even talks about youth having the right to participate, that would be huge leaps and bounds. To me it's something small, but I could see it having quite a significant impact.

**Ms. MacLeod:** Okay. Thanks. I just want to make one final comment. It's ironic that we've got this bill in front of us, and the province of Ontario runs the public education system, yet the province of Ontario on one hand has this piece of legislation before us but hasn't notified the kids it's going to affect through the public school

system. I think that's where the breakdown of government occurs. That's just my analysis on this.

**Ms. Vine:** Could I add a comment in addition to Stephanie's? It's absolutely critical that children in every community in the province know that this advocate exists. The question is, how do we make that happen and what can the legislation do to put that into place? The other piece that's weak in the legislation right now is, how will children, when they know about this advocate, actually be able to reach the advocate? The only information in the clause right now says that they need to know about it. It actually doesn't enforce that they need to be able to reach the advocate. If we think about Stephanie growing up in care, not getting any answers to her questions, where would Stephanie have been able to make that call to reach that advocate?

**Ms. MacLeod:** In a safe environment. Thank you both very much.

**The Chair:** Thank you. We'll go to Andrea Horwath from the NDP.

0950

**Ms. Horwath:** Thank you both for being here. I'm glad you followed up your comments. That's something that has been identified many times already, and I'm glad you've reinforced it again, that it's not good enough to say that the child should have access to an advocate; it has to be really detailed around what the child's rights are, the privacy that's required, access to the telephone and all of those kinds of things to give the child the confidence to go forward and take steps into their own hands, which is what we're encouraging them to do in terms of reaching the advocate.

It's interesting, Stephanie, that you talked about how this is not political. I have to tell you that I actually disagree a little bit. Certainly the issue of children's rights and the UN Declaration of the Rights of the Child and all of that shouldn't be considered political, but we are here in a situation where a government did make decisions around not engaging children, around bringing this legislation forward to cover up a damning report by an auditor on children's aid societies, ironically. All of those are political actions. Now we're stuck with a bill that was cobbled together at the last minute and thrown in front of us without that really fundamental piece, which is the voices of children.

I respect your opinion. But we are in a political forum and the government chose to do things this way, and I think we need to acknowledge that, if only for the purposes of making sure when we go forward with the future independent child advocate that we're supporting that change. Do you know what I'm saying? There needs to be a change with children's rights and with the way children are addressed as people in our communities. If we continue to say it's not political and that governments don't have an obligation, then I think we're maybe not going where we need to go in terms of putting that pressure on.

**Ms. Ma:** I hear what you're saying, and I agree in some respects, but what I was saying when I was saying

that it's not a political issue is that youth voice in itself, youth participation in itself should not be a political issue.

**Ms. Horwath:** Absolutely.

**The Chair:** Thank you very much to both Cathy and Stephanie. Our time, unfortunately, is up, but thank you—excellent points.

#### DAVID WITZEL

**The Chair:** We'll move on now to our next deputation, David Witzel. I hope I pronounced your last name correctly, and I apologize if I made a mistake with it.

**Mr. David Witzel:** Good morning. I'd like to thank everybody, first of all. I have a few things to say before I get into the nitty-gritty of this. I'm very surprised that with the seven-page letter that I wrote you, that you've read, that you invited me to speak. Thank you very kindly. You surprised me to no end.

You read the letter. I wish to apologize for the foul language that I used. I'm sorry about using it. My apologies to you all for that language. I have some things to explain. I was put in the care of the children's aid society with my brother in the 1950s. At four years old and six years old we were sexually, physically and mentally abused with the full knowledge of the children's aid society. That might give you some idea of why the language was used—inappropriately, but why it was used.

I personally think that there's room for a provincial advocate. However, this advocacy that you have here is a sham unless you give the advocate total independence and prosecutorial powers to enforce and prosecute those who dare harm children. Other than that, it's a great thing. The young people who spoke today, I hope you listen to them. The young lady Stephanie, 21 years old, who went through the system, I hope you listen to her. You haven't heard great things about this committee yet because it's flawed in the way that I say. It should be independent and given teeth. Either that or give the powers of this committee over to the Ombudsman's office, who has the powers now.

The Liberal government, seen to go to the Ombudsman's office when they had problems with the Ontario Lottery and Gaming Corp. and then publicly crowing about it, doesn't have the faith to go to the Ombudsman's office and give them the powers of oversight of children's aid. I find it staggering: that we were more concerned about lotteries than we are about abused children.

I'll take you to page 1 of the stuff I brought in this morning. I have a friend, Jean-Paul Brouillette, who, when he was seven years old, because there was no room for him in the foster homes and the children's aid in Quebec, was put into an adult mental institution, where he was raped time and time again until he got old enough to stop it. He became a violent biker. He hurt people. He attempted murder. He just got out of jail after 10 years for attempted murder. The system made him what he is.

The man has now changed. He is my best friend. Both of us went through hell like you never can imagine, and I wish nobody would ever have to go through that.

If you would all turn to page 8, please, of this handout. We have a letter from the Ontario Association of Children's Aid Societies, who I notice are coming on to the menu in a little while, and maybe they can explain a few of these things. The OACAS says, second sentence, "This means every children's aid society sets their own policies in regard to foster parenting and adoption, and, (I assume) accessing a client's file.... CASs do not report to the OACAS, nor do we have any authority over how a CAS delivers services." How come the OACAS is the mouthpiece, spouting their propaganda on behalf of the children's aid, and we can't ask them questions because it regards the children's aid? Who made them? This letter here says that each children's aid society sets their own policies.

We'll go to page 9, please. It appears to conflict with the Minister of Children and Youth Services, Mrs. Mary Anne Chambers, who states, second paragraph, second sentence, "The government's role is to fund, legislate and monitor the child welfare system. My ministry sets policy and provides program design for child welfare and licences"—blah, blah, blah. That's a conflict with what the OACAS just finished saying.

Who's running this ship? The OACAS says that every children's aid society sets their own policies. The minister says she sets them. There's a little bit of a conflict there.

Under section 68, each children's aid society is supposed to have a complaints procedure set out. Please go to page 10. You'll see the names Theresa Flynn, Lorraine Marshall and Cecilia Taylor, my steps 1, 2 and 3 to access the complaints procedure of the Children's Aid Society of Hamilton-Wentworth. Those are the people I'm supposed to see.

Please go to page 11. Look at the very names. You see Lorraine Marshall, you see Theresa Flynn and you see Cecilia Taylor, all on the complaints procedure. Go down to the very last paragraph on that page. "From my perspective, the reasons for having upper management ... respond to this man's request on behalf of the agency were valid in 2000 and remain in place." These people are the ones I'm to address my complaint to, and they're already stating that they aren't going to deal with me, which they didn't. They refer me to upper management. I can't get to upper management until I go through these people. They wouldn't answer the phones. They wouldn't answer my replies. So much for section 68 and the laws regarding that.

#### 1000

Now please go to page 13. This is from the Hamilton police department. Superintendent Wide, or Inspector Wide, who threatens me, states that the biological children do not recall any abuse. However, I'll take you back to page 11, first paragraph, last sentence: "In reviewing the intake material since 1998, it appears that our files support Mr. Witzel's allegation that he was harshly

disciplined and/or abused...." I now have a threatening letter from a superintendent of the Hamilton police force that I went to saying that nothing happened. The children's aid said it happened. I said it happened. The police won't even access the records to find out, and I provided all of this information to them.

I had the police before the privacy commissioner for almost two years. The privacy commissioner has issued two sets of interim orders against the Hamilton police department questioning, among other things, their qualifications as police officers and their knowledge of the job, starting from the Chief of Police Brian Mullan, through the detectives, the inspectors, right down to the very professional standards branch. This is the privacy commission questioning their capabilities as police officers. It makes me shudder. You can read about that same police force from page 16 right through to page 25. Please do read it.

I have gone through every step that the government for the last three or four years has outlined that I'm supposed to do. There have been roadblocks thrown up in my way every single place I turn, with the exception of Andrea Horwath. I have fired letters at the Attorney General, the Premier, the Ministry of Children and Youth Services and had no response. I have the evidence. What's wrong with this situation? Why doesn't the Ombudsman have it? If you are going to create a children and youth advocate, give somebody the power of oversight.

I will leave that with you. I'll take any questions. If anybody wants to talk with me afterwards, whether it be the audience or the members here, please do. Thank you for listening. I've held my temper and watched my tongue as best I can. It's up to you. You may ask.

**The Chair:** Thank you, Mr. Witzel. There's about a minute per party of questions. Of course, as Mr. Witzel said, if you want to, you can ask him more questions outside. We'll begin with the PC Party.

**Ms. MacLeod:** Thank you, Mr. Witzel, for coming here today and providing us with some information not only on your experience but your views on how we should proceed. Mr. Witzel, do you think that the independent child advocate should be legislated to deal with people over the age of 18 who are still receiving services from the province of Ontario?

**Mr. Witzel:** Ms. MacLeod, yes, I think the provincial child and youth advocate seems to have come in the back door and cut the families out of the deal. That means people over the age of 18 who might not only have been wards of the society, like I was, but who might have problems with the system after they turn 18. Here I am, 60 years old, and it's taken me over 40 years, living the life that I've lived, nightmares every single night of my life, to come. If we left it the way it is right now, that would mean I wouldn't be able to approach the people and get some justification. I'm here not to undo—I can't undo what happened to me—I don't want it happening to these kids. The government doesn't seem to get it. These

kids: I don't want them to have to go through what I have to go through.

Jeffrey Baldwin was starved to death by his grandparents. When I was being abused, I wished I'd been killed. Isn't that a heck of a thing to say?

So, yes, I think it should include the families or anybody who becomes involved with the children's aid.

God, give somebody the powers of oversight so they can not just review but they can prosecute, or give it over to the Ombudsman and tie the two offices together and give them that.

**Ms. MacLeod:** Thanks for your courage in sharing this with us today.

**Mr. Witzel:** I'm sorry for getting so hot, but I am.

**Ms. MacLeod:** Hey, do you know what? You're a little bit more calm than some people were in question period yesterday—I'm speaking of myself, of course.

**Ms. Horwath:** I just want to reiterate my support for the whole issue of Ombudsman oversight for children's aid societies. You may be interested to know that the Ombudsman actually wrote a letter to the committee, which we received yesterday, once again indicating his support for an independent child advocate but saying that making this office of the child advocate independent definitely does not in any way say that it still does not require that in-tandem move of having the Ombudsman have independent oversight. I'm still bringing the petitions into the Legislature, so we're still on that track, and hopefully one day the government will see the light of day and know that that is the right thing to do and needs to happen.

That's the first thing.

The second thing is, you did a great job. You didn't even swear once. That was awesome. Thank you very much for coming.

**Mr. Witzel:** Thank you. I have, on page 8A, what you were talking about regarding Mr. André Marin.

As much as you people received my seven-page letter and you saw me slamming this, I also slammed the privacy commissioner, I've slammed the Ombudsman. I talked with the Ombudsman's office for a couple of hours yesterday.

I think the Ombudsman should be given the powers, people.

As much as you people read that I slammed the Liberal Party, this is not all the Liberal Party's doing. The NDP and the Liberals and the Conservatives have all been in power since the children's aid society was conceived in 1892. All of the parties that have been in power since the inception of the children's aid society are responsible for the neglect of the children. It just happens that the Liberal Party is the majority and in charge right now. They got the biggest hammering, but all the parties are responsible.

I think it's long overdue that the lid is lifted off the Pandora's box so we can all deal with something that's important, and that is stopping the abuse of children. Let's have all three parties finally get together, for once in the history of the province of Ontario, and do some-

thing rather than giving yourselves a raise. The most important thing in the world is the children. Let's have all three parties get their act together and work together to protect the children, please. If you never do anything, do that.

**The Chair:** Any questions or comments from the Liberals?

**Mrs. Van Bommel:** You've given us lots of information, and my question has already been addressed, so thank you very much.

**Mr. Witzel:** Once again, I apologize for cursing in the letters.

**The Chair:** Thank you very much for your presentation.

#### INTERMINISTERIAL PROVINCIAL ADVISORY COMMITTEE

**The Chair:** We'll move on, then, to the next presentation, which is from the Interministerial Provincial Advisory Committee, IMPAC—Jamie Emerson, chair.

**Mr. Jamie Emerson:** This is going to be a joint presentation, so Cheryl Milne, the vice-chair of the committee, will be doing part of the presentation as well.

**The Chair:** You both have up to 15 minutes for the presentation. Any time not used up in your presentation will be used by the committee members if they have any questions.

**Mr. Emerson:** Thank you very much. We did provide a package of information about IMPAC. What I'm going to do is just give a very brief overview of the committee, and Cheryl will speak specifically to the recommendations that we have about the bill.

1010

IMPAC is the Interministerial Provincial Advisory Committee. It was formed in 1976, which was actually before the office of the child and family advocate. The membership of IMPAC includes members from the Ministries of Health and Long-Term Care, Community and Social Services, Children and Youth Services, both children's and youth justice, and Education. In addition to that, there are some sector representatives from child welfare, children's mental health, youth justice and developmental services. In addition to that, there are people who have specific clinical expertise, so there are representatives from psychiatry, pediatrics, neurology, from child and youth work and social work.

One of the major functions of the child and family advocate's office is to deal with children who have special needs. The Interministerial Provincial Advisory Committee deals specifically with children who have complex special needs. That means children, first of all, whose needs are so clinically complex that they require the expertise of a number of different disciplines to understand their needs and to develop plans that are appropriate to meet those needs. When those plans are developed, they cross the jurisdictions of different ministries and the different service sectors we've mentioned. So it requires that level of problem-solving

and that level of collaboration in order to meet those needs. So the committee really functions in support of the advocacy office in both designing and making those plans actually happen for the children in the province with perhaps the most complex special needs.

**Ms. Cheryl Milne:** The recommendations are set out throughout the submission that we've presented to you and are also in an appendix at the back. They've been agreed to by all the members of the committee, and the members are also listed in the back of the submission.

The first recommendation deals with the preamble or statement of purpose. We are asking that you consider including a preamble that focuses on the kinds of children whom IMPAC has dealt with most specifically, those with complex special needs, as well as aboriginal children. We also ask that such a preamble include reference to the importance of facilitating co-operation and coordination in the provision of services to children across sectors in the most effective manner in accordance with their best interests. That has been a major function of IMPAC: getting the ministries to work together to come up with creative solutions to some of the difficulties. We want to move beyond the silo approach to children and treat them holistically.

We are also recommending that IMPAC itself get some specific recognition—or a similar structure. We're not necessarily asking just for us; a committee like IMPAC. IMPAC has been very helpful in solving some of the more difficult cases, and bringing together the kinds of expertise that has been around that table has been immensely helpful to the individual ministries as well as to the office of the advocate.

We also recommend that there should be a reference specifically to interministerial co-operation, as we still have a number of different ministries that deal with the children with complex special needs. We have the Ministry of Education at that table as well as the Ministry of Health and Long-Term Care, the Ministry of Community and Services as well as the Ministry of Children and Youth Services. We want to see some emphasis put within this bill to make sure that the advocate has some power to facilitate this kind of co-operation that really works for the rights and interests of children.

We are recommending that the definition of "child" include persons over the age of 18 who are receiving services, whether under the relevant legislation or from youth-serving agencies and service providers. Cases that have come before IMPAC have included children whom we've monitored over a period of time. They may have first come before the committee when they were under 18 but there are difficulties because of their complex needs in transitioning into adult services. There is still a role for the provincial advocate to play in regard to that transition.

We are also specifically asking for a reference to an expanded concept of the children who are receiving services or young people who are receiving services or being dealt with under the Youth Criminal Justice Act, so that it goes beyond just those receiving custodial sen-

tences. Again, the young people who end up before the committee may not in fact be in a custodial setting but may have conditions and terms in relation to youth criminal justice.

The final recommendation that the committee makes is in relation to the experience of the provincial advocate who is ultimately appointed. Because of the nature of the kinds of children who are in most need of advocacy in this province, it's imperative that an advocate have experience in two or more of the sectors that impact on children. We've listed those there: children's mental health, child welfare, developmental services, youth justice, education and pediatric health services. It's important that the provincial advocate has expertise in those areas so that they can better understand and coordinate efforts to advocate on behalf of children with complex needs. Thank you very much.

**The Chair:** Thank you. We're going to stick close to the timetable here, members of the committee, because of the fact that I've been told there are a number of people coming just before lunchtime from out of town, and I want to make sure that they get heard so they can get back to where they've come from. We've got about two minutes per party, and we'll begin with the NDP this time and Andrea Horwath.

*Interjection.*

**Ms. Horwath:** You want me to be quick? Okay, I'll be quick.

Thank you very much not only for your presentation today but for the good work that you do on the committee. I hear it's a fabulous place to solve real problems, and I really want to thank you for the work you do there.

I was wondering particularly about your suggestion on page 3 about somehow enshrining the existence of the committee in the legislation. I agree with that. It's not the first time I've heard that as a concept, and I support it. I'm wondering if you have any language, any suggestions around where and how that goes in?

**Ms. Milne:** The committee didn't come up with particular language. I'm the only member of the committee with legal expertise, so we didn't actually draft something. It doesn't necessarily have to say "Interministerial Provincial Advisory Committee." It can be more generally worded so as to be a committee involving interministerial co-operation or with members of all ministries providing services to children in the province. I think there can be some leeway given to the advocate to define the committee structure.

One of the things that has been a key component of the committee has been community representation in addition to ministry representation, and that is something that should continue because it allows for the clinical expertise that the members rely on.

**Ms. Horwath:** Thanks. I would hope that we would actually put it in the bill, though, as opposed to the regs. It's safer to have it in the bill, to know that it will exist.

**Ms. Milne:** That's clearly what we're recommending, that it be in the legislation and not be left to the regulations.

**The Chair:** To the Liberal Party.

**Mrs. Van Bommel:** Thank you very much for your presentation. I'm looking at your third recommendation, in which you're talking about interministerial co-operation. One of the things we're trying to achieve here with this legislation is total independence for the advocate. That's because in the past we've seen government interference in the work of the advocate. How would you envision interministerial co-operation that doesn't interfere with what the advocate is doing?

**Mr. Emerson:** We could have interministerial collaboration in ways that are not necessarily prescriptive. A lot of the things that happen now that are useful interministerially are done more because the ministries have bought into what we're doing, but there has been quite a bit of leeway for ministries to do that. There have been times when the ministries have been very much onside and co-operating and there have been times when the ministries have not been onside and have not been co-operating. We've had a much more difficult time finding those kinds of solutions which require that kind of co-operation.

1020

I think the idea we're thinking about is that there be something in the legislation that requires that the ministries work together collaboratively, that it's something we can expect ministries to do, not because they choose to, but because it is part of the expectation of the legislation.

**The Chair:** We'll move on to the Progressive Conservative Party.

**Ms. MacLeod:** Thank you very much, Jamie. It's nice to see you again, and Cheryl. I just wanted to say that we really support the work you do on this side. I know my colleague knows Dr. Duane MacGregor quite well, so we appreciate the work and quality of your work. Certainly it is our view that a role for something called IMPAC is important, not only for an independent child advocate but with respect to all of children and youth service throughout the entire provincial government. It is our view that silos need to be broken, so we support this.

I wanted to ask a question with respect to your first recommendation, where there needs to be a preamble or a statement of purpose, which has been reiterated several times in the last two days—that there is a requirement for that in the legislation. I take particular notice of "the special needs of aboriginal children and children, who due to the complexity of their difficulties require the co-ordination of multiple service providers, service sectors and/or ministries." I think that's a no-brainer. There have been musings in this committee in the last day and a half of setting up deputy advocates. Would you support that sort of format for later on in the bill, with respect to what you're suggesting in the preamble?

**Mr. Emerson:** In some ways, I'm a little bit reluctant to answer that, because I'm representing a whole committee, and it isn't something we've discussed in the committee. I think there are pros and cons to doing that. Those are my personal opinions, but I'd feel much more

comfortable if I were supporting the views of the whole committee instead of just my own.

**Ms. Milne:** If I could just add, I think that in terms of its recommendations, the committee clearly wants to see emphasis on the needs of aboriginal children and children with complex needs. Whether that's done through the appointment of a deputy or through other language in the legislation, those are the two areas the committee has seen as being in need of special attention.

**Ms. MacLeod:** Thank you both very much. This has been very helpful.

**The Chair:** Thank you for your presentation today.

#### SARAH-JANE DAGG

**The Chair:** Members of committee, our next presentation is through teleconference. It's Sarah-Jane Dagg. Is Sarah-Jane Dagg there?

**Ms. Sarah-Jane Dagg:** Yes I am, and good morning.

**The Chair:** Hi. Good morning. How are you?

**Ms. Dagg:** I am well. Yourself?

**The Chair:** Fine, thank you. The rules of the committee are basically that you have up to 15 minutes to address the committee. Any time that you don't use in your presentation can be divided among the three parties to ask you some questions.

**Ms. Dagg:** Fantastic. I'd just like to introduce myself. My name is Sarah Dagg. I'm 21 years old, and I'm a former crown ward of the Ottawa children's aid society. I will be speaking today wearing a few different hats, I suppose: speaking from personal experience using advocacy while being a youth in care; different experiences I've gone through within the mental health system here in Ottawa; as well as different professional opinions that I may have, which include working with the Children's Aid Society Teens, which is a group in Ottawa for advocacy and is an advisory to our children's aid society and different national organizations, such as Defence for Children International-Canada and Save the Children.

I'd like to start off with one of the points that I find is most important with the bill: a clear right to access this advocate. As I understand it, the advocate is capable of coming into a facility to speak with a youth, but I strongly recommend that there needs to be something very clear that states that a young person would be able to pick up the phone and call an advocate. This is very difficult, especially living in a group home or a foster home where phones are kept pretty tightly, on pretty tight timelines and are often in very open spaces. For example, I remember that the first time I had to call an advocate I was in a group home. The only phone that was accessible to the youth living there was in a very common place. It was in the dining room, which was the central room of the house. It took me a very long time before I was actually able to phone them. I think it was about a day and a half after the incident that I would have liked to report on. I did this from the dining room at about 3:30, 4 o'clock in the afternoon, which is when everybody is coming home from school. There's all kinds of rustling and bustling. It's really difficult to try to get a clear call

together. By the time I had finished the call and hung up the phone, there was another young person who was like, "Oh, wow, who were you talking to? It sounded like you were getting some really good information. I'd like to talk about that too." It was an issue that was very much across the board at the place I was living at. Not only was she denied the right to phone the advocate at that time, but she was also told that the advocate was accessible to me because I had so requested, but because she had heard it from me and we were complaining about the same issue, there would be no point for her to call the advocate.

I'm also concerned that if an event was to arise where the advocate would quite potentially like to launch an investigation into a particular facility, gaining access to enter the facility may be difficult. I mean, reasonable cause or reasonable limits, I think, are unacceptable, but if an advocate feels that they have the need to enter that facility, to have to call the owner or the foster parents and arrange a time with them may or may not be too late after the actual cause of the event. If we're talking a day or two, I fully understand. However, I've seen instances where it has taken a week or two before the advocate has been granted access to a facility. So I think that there definitely needs to be some guidelines towards how and the reasons that an advocate may be able to enter. However, I think that a timely fashion definitely needs to be put in place to expect that the issues are still fresh and that the facility doesn't necessarily have time to cover up.

I do note that the ministry currently performs reviews—I believe it's once a year—on facilities. I've seen representatives from the ministry come into a residence, and for about, I'd say, 48 to 72 hours prior to that, you would have maintenance people coming in. They be filling in holes in the walls, they'd be finally pulling out the fridge and stove from the kitchen and actually cleaning to make the place look presentable, which may happen for two days out of the entire year, which is definitely a huge concern. I've taken pictures and reported that to the ministry. By the time they have an opportunity to come into the house, everything is covered up. The pictures were no longer valid, and my case wasn't properly heard.

As far as mental health goes, I've spent some time in the facility at the Children's Hospital of Eastern Ontario. They do have a ward—I believe it's 12 rooms—for youth with mental health problems. At the time, I was very suicidal, very depressed, very worried about coming into care. As soon as I came in, they would kind of hold this idea of basically a chemical restraint over your head. I don't remember the term for the drug. I know we all called it CPZ. I believe it's called chlorpromazine or something of the sort. It was basically a needle that would be administered to you and would knock you out for a good few hours. For me, it took about a day before I was able to walk out of it. I think this is a very large concern that many people experience in the mental health system regarding chemical restraints, and not once throughout my time there was it explained that there was an advocate that I would be able to contact if decisions

were made that I did not agree with. I think that especially being a crown ward and having the government as my parents, it was very difficult to be able to say, "Well, I don't agree with this," especially when you don't really know what's going on. You wake up in a strange room all of a sudden, and nobody explains to you really where you are or why you're there. They just sort of tell you to open your mouth and give you some more medication to help you get through it. I honestly couldn't even tell you very well how long I was there due to that.

I'd also like to talk about the location of the office. The advocate's office is currently located in Toronto. Ontario is a very large province, and it's very important that the advocate is able to serve these youth as best possible. I would make a recommendation to decentralize the offices. Have our main advocate in Toronto, quite possibly, but also have some satellite offices throughout the province, perhaps another three or four offices, which would make it more accessible for youth, which would allow for a better promotion of the office and for a better community-building experience. The advocate wouldn't be seen so much as a threat to various agencies or facilities but rather as a partner to improve the quality and conditions that these young people are facing. It will be difficult either way, but that is certainly something that needs to be spoken to.

1030

I also believe that we should not thin out the mandate that the advocate currently has. I believe that we still need to keep in consideration that the advocate should be able to serve, for example, students in provincial schools, demonstration schools, young people being held in police court holding cells, being transported from a facility to a police station—I think this is very important; I can speak from experience—with young people being transported in the same vehicle with adult criminals. This is unacceptable, and this does happen. If more people aren't educated and taught that this isn't right and issues are coming up with that, then the advocate needs to be involved. The advocate needs to have an opportunity to help these children, just as they would youth in care.

Sorry, I'm getting really nervous and just kind of rambling on, so I hope this makes sense to someone.

**The Chair:** Yes, it does, and you can slow down. You don't have to speed up. We are paying attention here.

**Ms. Dagg:** Okay. Sorry, I wish I could be there in person. Unfortunately, it's a bit difficult for me.

**The Chair:** You're doing a great job.

**Ms. Dagg:** Something that also needs to be spoken to is the issue of unions with public service workers. Currently, some of the staff of the advocacy office belong to a union which may or may not be the same union as some of the services that these young people are receiving in young offender facilities.

I believe that staff should have access to join a union. I'm not contesting that whatsoever, but I think that there needs to be some type of distinction. I think that the staff should still be able to maintain their benefits and their seniority. However, if a facility were to go on strike, for instance, which is often the time when the advocate

would be most needed for these young people, the advocate's staff who may be entering the facility may belong to that same union that is on strike. That would cause some pretty large problems. It could cause riots. We definitely need to make sure that these young people are cared for and would be able to speak their minds during that difficult time, especially since it's something that could potentially save lives in that case.

When it comes to an advocate's right to access information, if an investigation were to be launched, as I understand the bill suggests, the advocate would only be able to access the same information as the child normally would be able to, either through legislation or policy. To me, this is a huge loophole. I think that the advocate should be able to access documents such as facility logbooks, which would potentially include information regarding other youth in the facility, including some of the staff who have worked there. However, this is probably one of the most important documents that they would be able to access. It would have information about how a certain situation was treated, how many other young people were involved, how it was dealt with. It's the major tool that most people use. I understand that from group homes. For an advocate not to be able to access that type of information or to have to jump through all kinds of hoops to access that would be unacceptable. I think that is a tool they would require to do their jobs to the full extent they need to, in order to represent our rights as best as is possible.

It's completely unacceptable that a youth would not have something very clear, and written down, to be able to call immediately after a situation—or as soon as they mention that they would like to call that advocacy office, they need to be able to call, and they need to be given a space to do so privately. If there's not a phone available, somebody needs to make that available. Speaking even to the terms of the inquest into the death of James Lonnee, he mentioned just hours before his death that he wanted to contact the advocate and was denied this right. That could have potentially been a case where the advocate could have helped save a life in that situation. I hope that we never have to revisit that type of situation.

I'm not sure where to go from this. I know that I threw in a lot of really quick things, but I think those are the main points that I wanted to address that I may not have addressed fully. I'd be open to questions at this time. I feel like I'm kind of rambling on right now.

**The Chair:** Thank you for your presentation. There is only about a minute left, if there's one person who has a question. Otherwise, I just want to thank you on behalf of the committee for your excellent presentation. Everything is recorded here in the Hansard transcripts.

**Ms. Dagg:** Great. Thank you.

**The Chair:** Thank you very much.

SAMUEL FRAGOMENI

**The Chair:** We will then move on to our next presentation. My understanding is that the individual is present: Samuel Fragomeni. Good morning.

**Mr. Samuel Fragomeni:** You have to forgive me—

**The Chair:** Please have a seat. There's water there if you need a glass of water. Just relax.

**Mr. Fragomeni:** This is my first time before a committee. I got a chance to observe a few people.

Good morning, members. Thank you for allowing me to speak this morning regarding children's rights. My name is Samuel Fragomeni. I once enjoyed a loving, healthy relationship with my son. I have never caused any mental suffering. I've been employed for the last 20 years. I pay taxes. I pay child support. I have never subjected my son to any form of mental abuse, as alleged by the children's aid society.

Allegations of mental abuse usually come from a parent during a custody or access battle. These allegations are manipulated in the court system by the children's aid lawyers. Allegations of any kind should be proven to a high standard and not based on a theory or one person's opinion. Children have the right to what both parents can offer in terms of relationships, opportunity and health care.

The children's aid society: unwarranted government intrusion and accountable to nobody. After interrupting my Superior Court access orders, the children's aid society only allowed me a dozen visits in almost three years. If there was any emotional harm caused to my son, it was when the CAS interrupted my Superior Court access orders. What is the CAS message to the children, or has this become the government's new social policy?

Children should be enhanced and nourished by example and opportunities, not drugged for being kids. Children should be nurtured and protected to the fullest extent of the law and by responsible parents. All too often, children are exploited and treated as expendable by government and their funded agencies and some parents. Corruption, power and politics get a higher priority than our children. Due to those kinds of attitudes, the moral fabric of our society is eroding.

In my particular case, after interrupting my Superior Court access orders and causing documented mental stress to my son, I am expected to pay the court costs, which I guarantee you I will not pay. Number one, the CAS has already been paid for three years with taxpayers' money, and now they want me to foot the bill for them again. It just ain't going to happen. That doesn't make good sense to me.

1040

To sincerely address the rights of children, we must look at who and what institutions deal with and have control over the children's rights. They include, but are not limited to, first of all, the spiteful parents, who abuse these basic rights—a right to two parents—through false allegations which are used to gain an upper hand in custody or access battles or to actually conceal the causes of difficulties, if any. That's usually the basis of the CAS's case.

Parents like this often withhold access to grandparents and other family members. Custodial parents who deny children private health care by choosing the limited

benefits that welfare has to offer are abusing the rights of their own child and wasting taxpayers' money.

Children's aid workers are unqualified, and who are they selected by? They ignore the documented symptoms caused by emotional stress when spiteful parents do not follow access orders. Access orders are for parents to follow for the benefit of the child.

In my case, the children's aid society acted in the interest of a parent, not in the interest of the child. Are we, as taxpaying and responsible parents, to accept when the CAS tells us that we cannot ask our own kids how they are doing in school? I don't think you'll find a parent here in Ontario for whom that would be acceptable.

The CAS threatens children not to call their father because they will get in trouble. This is unacceptable to anybody, I am positive, in Ontario. The CAS, with all their wisdom, can come out with a statement—and I'll quote them—that “any access to the father is more detrimental than no access at all.” Can you imagine that?

The other issue that deals with children's rights is, of course, the legal profession and the judicial system. The CAS lawyers, so-called upstanding citizens—their only purpose is to fuel unfounded allegations and create cases against parents, at the same time, often discouraging doctors from testifying in civil proceedings. These CAS lawyers are in charge of the public funding the CAS receives, millions of dollars. They justify their own spending and their own time in court by keeping parents needlessly in court. They are paid with the taxpayers' money, and after kidnapping children, they expect the parents to foot their bill again.

A court-appointed children's lawyer, when accused of not properly representing the children, replied to me that their function is to look after the legal interest of the children and not the emotional interest of the children. It doesn't make sense to me. These lawyers, even after my kid complained of the effects of Ritalin, and it's documented in a CAS affidavit, come to court six months later and say that the child now has learned to like Ritalin.

Some judges are influenced by the millions of dollars that the CAS receives, while others remove themselves from hearing any more proceedings because the allegations are unfounded and ridiculous. You can't say that all judges are bad. Still other judges may have personal or business relationships with CAS lawyers. Other judges simply ensure that the matter will continue before the courts by making ridiculous orders that award any information or any access to the sole discretion of another parent. In a bitter access to custody battle, when someone is awarded sole discretion over any information, what do you expect the father's going to get?

How can an Ontario provincial judge label a five-year-old child “special needs”? No medical training—he has a law degree—and he comes out and makes this determination. Regardless, public accountability would eliminate many of these possible causes for children's rights infringements.

On April 17, a Family Court judge refused to listen to a recorded telephone conversation that contradicted the

CAS's affidavit. I was also accused of wasting court time for fighting to see my son. I was also threatened to pay in the neighbourhood of \$30,000 for this judge, the CAS lawyer and this social worker, who has already been paid by the taxpayers—myself included.

I can assure you that my time was not wasted fighting for my son. As a taxpayer, I will not pay the wages of these CAS social workers and lawyers who have caused much pain to me and my son. Unqualified social workers, lawyers and judges are accountable to no one. Filing a complaint against a lawyer, a social worker or a judge is a waste of time in this province.

The other issue dealing with children's rights is the health care providers. Many doctors ignore the child's family members and support the CAS and simply reply that they are the authority and they won't go against the CAS, regardless of any evidence. They also stand to be compensated generously by the CAS for testifying on their behalf, to the tune of \$400 or \$500 per hour in court.

Because of this, a child ends up on Ritalin—because of the mental abuse caused by the CAS and the doctors who medically abuse children with drugs, like psychotic drugs such as Ritalin.

**The Chair:** Mr. Fragomeni, you have about one minute left.

**Mr. Fragomeni:** Some kids are being taught to enjoy it. Ritalin, which can be bought and sold on the streets, is often the result of parents who lobbied this doctor for the drugs themselves. Parents abuse it and children sell it in school yards. Citizens in our society, dependent on government services, who advocate for drugs subject to abuse should themselves be tested for drug abuse.

If we are to be sincere in addressing the rights of the child, we must ask what kind of access does the child prefer, and why did the CAS and the lawyers ignore the children? In my case, Ritalin was not prescribed to control ADDH but to stop my kid from repeatedly asking for his father when the access was abruptly interrupted by the CAS. Were the symptoms, if any, actually ADDH or were the symptoms, if any, the result of what little access that I had? A dozen times in three years.

There were symptoms that were oblivious to the CAS. For the record, the symptoms of a child who has the father-son relationship terminated by the CAS will include: first, tantrums; second, nightmares; and then a prescription of Ritalin to make him calm, docile and forget about his father. They have yet to be held accountable for their actions. I've got a few recommendations and I'll be very quick on them.

(1) The advocate must protect children from some custodial parents who violate access orders. Court orders are used to force unwilling parents to allow access; however, some parents and CAS withhold access. The child advocate must intervene if requested by either parent or child within seven days to ascertain the child's view on the CAS's actions. The child's advocate must address the rights of children during the court process; otherwise, the CAS can keep parents in court unnecessarily, like what's happened to me.

(2) CAS workers—you must introduce stiff penalties for bad faith, for perjury and the fraudulent spending of tax dollars. Funding and expenses of CAS should be made public with regular, publicly funded audits.

1050

(3) The legal profession—the public must have access to complaints against lawyers and Family Court judges. CAS lawyers and judges should be elected by the public, not appointed or otherwise; they should be held accountable to the public and penalties in place for collusion.

(4) Health care practitioners—doctors must address all circumstances and explore all alternatives—

**The Chair:** Mr. Fragomeni, the 15-minute time limit has been passed.

**Mr. Fragomeni:** I've got two lines left.

**The Chair:** Okay.

**Mr. Fragomeni:** Doctors must address all circumstances and explore all alternatives before prescribing psychotic drugs such as Ritalin, especially when the child says to them outright, and in documented affidavits, that he does not like the effects.

Another recommendation: conduct a public inquiry of the Sudbury-Manitoulin Children's Aid Society and obtain immediate input from the children affected by the CAS.

The CAS will inform the affected child, in the presence of both parents, of the role of the advocate—

**The Chair:** Do you have a copy of that, that you can give?

**Ms. MacLeod:** We all have a copy.

**The Chair:** We all have that in front of us as well. I do apologize. It's just that we have some people coming from out of town and want to make sure that they're given their time as well. We will definitely take your comments into consideration.

**Mr. Fragomeni:** All right. Well, thank you for your time.

**The Chair:** Thank you very much.

**Mr. Witzel:** Mr. Chair, may I have a word with the committee?

**The Chair:** Yes.

**Mr. Witzel:** It takes so much for all of us people to come down here. This man is speaking. He has obviously lost rights to his child. Can you please instruct the members of this committee—I'm not naming anybody in particular—to forget about his BlackBerry and turning around and looking at a picture of a dead guy on the wall while this poor man is speaking, Mr. Zimmer?

**The Chair:** Excuse me, sir. The committee has got rules. We're trying our very best to balance hearing everybody as well as allowing everyone to come in.

**Mr. Witzel:** Maybe it would be nice if he listened, instead of paying attention to some dead guy on the wall.

JEFFERY WILSON

**The Chair:** We're moving on to the Tikinagan Child and Family Services—I apologize if I pronounce it improperly. I'm sorry, it's Jeffery Wilson; my apologies.

**Mr. Jeffery Wilson:** I know, 15 minutes. I heard you. Got it.

**The Chair:** I do apologize, but we're under pressure.

**Mr. Wilson:** No problem. I appreciate it, and I thank you very much, honourable members. I have provided you with a two-page summary sheet. What I want to do is go over with you what is set out here and then give you a little background as to why this is so important. I'm not going to get very subjective with you, because I know there are a lot of people who are going to speak to you quite eloquently about their own experiences.

I'm here as a lawyer; I've been doing this for 30 years. I've appeared at the United Nations' Committee on the Rights of the Child a number of times.

There are two issues that I want to address with you that are key in this legislation if you want to do what the honourable minister indicated was the intention of the government, namely, to make the child advocate as independent as the Ombudsman or the auditor. If the intention of the legislation is to fulfill what the honourable minister indicated when introducing the bill, then there are two key, axiomatic aspects that I want to address.

Firstly, section 20 sets out the limitation of liability of the advocate. You'll see in paragraph 2 that I've actually enunciated suggested wording for the committee, and then in paragraph 3:

"The mischief these subsections address is twofold: (1) pressure, intimidation and bullying experienced by youth in institutions who are interviewed by the advocate; and (2) pressure, intimidation and bullying experienced by the advocate in the course of doing her work."

This legislation essentially is allowing or permitting or encouraging youth and their personification, the child advocate, to be the whistle-blower when there is a calamity. The whistle-blower needs to be protected. How do you protect the whistle-blower? I suggest to you that you do it the same way that you have legislatively done it in respect of the Ombudsman, and that is you must create privilege. That is set out in (2), where I say:

"Subject to section 18(8), anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by the advocate is privileged as if the inquiry were proceedings in a court.

"(3) Any information that is obtained by a service provider in contravention of the privilege is inadmissible in any court proceeding."

You must do this—paragraph 5—because otherwise the work of the advocate is going to invite defamation lawsuits and it's going to invite enormous pressure upon youth who might want to speak to the child advocate. I'll come back to this at the very end.

The next issue, the second of the two, is the advocate's right to enter. As you know, the legislation, in the form of the bill, provides in subsection 14(4) that the advocate may enter, but only upon reasonable notice to the service provider. This is a problem; this creates a mischief. The mischief, as is obvious to all of you, first, is the delay to access to the vulnerable. It's an opportunity for the authority to exert pressure upon the child or youth prior

to the advocate's attendance. It's a counterproductive dynamic, because the advocate then gets into a dialogue with the service provider about, "When can I come?" "Well, when I'm ready for you to come." And it's inconsistent—to the extent anybody cares anywhere in the western hemisphere, but it is—with article 37(d) of the Convention on the Rights of the Child, which, curiously, Canada did ratify December 13, 1991. It's one of the wonderful distinctions between us and the United States. They have not ratified the Convention on the Rights of the Child, one of only two countries in the world.

So I'm suggesting that you consider adding to subsection 14(4) as follows—you'll see the wording; I'm not going to repeat it to you—and I am suggesting that we incorporate from legislation that works fairly well in the province, which is the provisions of the Child and Family Services Act, so that we give the advocate the same powers as a child protection worker to be able to enter. All of you who have experience in the area are familiar that a child protection worker doesn't need a warrant; if that worker believes that a child is at risk of harm on reasonable and probable grounds, they can enter at any time in order to contain the damage and deter it. I'm suggesting that if we're going to create a child advocate who is going to have the kinds of authority and power that we want, that child advocate should have at least the same powers and authority as a child protection worker.

Now I want to tell you why this is so important, and sometimes the past guides us in terms of the present and the future.

In the early part of 1996, there was a labour dispute in this province. Many of you might remember it. OPSEU went on strike and, as a result, there was an enormous collision between the government as management and prison guards as labour. I can tell you that the experiences of the youth in the middle were worse than the most horrific high-conflict custody dispute in which I've been involved for 30 years. We had youth who were caught right in the middle, where both the prison guards, or the labour movement or the interests personified by labour, and the government, personifying the interests of management, were dispensing with these youth as if they were irrelevant. There were 164 violations taking place in this institution because both management and labour were intent on advancing their cause. As you may recall, it resulted in a riot, hundreds of thousands of dollars, at Bluewater. And as you may also recall, there was a subsequent death of one of the inmates that was related to what took place at Bluewater.

Judy Finlay was the child advocate at the time, but Judy Finlay couldn't get in there as quickly as she needed to. Judy Finlay was threatened. Judy Finlay was blocked in her efforts to do the work. The people who later became my clients, 12 youth, were threatened if they spoke to her. The government of the day didn't want her information to become public. It wanted to control the information.

The government's insurer, when the youth sued the government, didn't want Finlay to say much because it

would maximize their exposure to damages and increase their liability. The then Solicitor General and Minister of Correctional Services was, at the same time as Finlay was doing her work, making statements disavowing her. So it became a sideshow spectacle to the problems of the youth. Therefore, I became a necessity, as the lawyer for the youth. This shouldn't happen. This is not the way it is supposed to occur, and that is what will occur with the current legislation, because the current legislation reduces the child advocate to an employee.

1100

So if we want to create an office that avoids the need for youth to hire lawyers and go to court and sue and do all the silly things that adults do all the time, then we need to have a child advocate who has the power and authority to talk to youth when necessary and, more important than that—or equally important—we need to let youth know that what you say to the child advocate will be privileged, will have the same privilege as if you were talking to a lawyer, so that service providers know that even if you extract the information from the youth after they talk to the child advocate, it is not admissible in any kind of proceeding.

Those are my submissions. Thank you very much.

**The Chair:** Thank you. I feel like I've just had a very good law lecture from my law school days.

Anyway, we have about four and a half minutes for the three parties. The Liberals are first.

**Mrs. Van Bommel:** Thank you very much for this presentation. I really think you show us in your presentation the reason that we are talking about independence for the advocate and why it's so important. Certainly the issue of access, the ability of the advocate to go in when he or she needs to, as opposed to giving notice, has been brought up a number of times and, as a government, we are certainly listening to that.

**The Chair:** The Progressive Conservative Party.

**Mrs. Elliott:** Thank you very much, Mr. Wilson. That was an excellent presentation. I should say at the outset that I agree with you entirely on that. I think it is important for the child advocate to have the necessary tools to do the work that he or she is supposed to do in order to be able to have the full intent of this act be seen through.

The one question I would have is with respect to subsection 14(3) of the current legislation. I know that you've addressed the concerns that you have with respect to access in subsection 14(4). But subsection (3) deals with the issue of compelling testimony and questioning witnesses and so on. Are you happy with that in its present format or would you like to see that changed to allow the child advocate to question witnesses in the same way as the Ombudsman has the ability to do?

**Mr. Wilson:** You can't have it both ways. I guess the legislative policy here is to create an officer who is not—the advocate can't also appear in court and is not a legal counsel. I've resigned myself to the greater good of the advocate being accessible, getting the information and doing a different form of advocacy than what we are accustomed to as adults, in the sense of going to court and subpoenaing witnesses.

I think if there is the advocate out there who can do the work that is described in this legislation, knowing that there is privilege, then that will be a good enough duty for the advocate and that will keep the advocate busy enough. If you taint the advocate, if you say to the advocate that you are also going to be investigating and you have the right to act as the Ombudsman at all times, then I'm concerned that we'll get bogged down.

**Mrs. Elliott:** If I could just ask a follow-up question, because we're sort of struggling with that whole issue right now. If that's the case and the child advocate is to act in that sort of review capacity, as opposed to investigate as an Ombudsman does, would you then advocate or agree that the Ombudsman could have ultimate jurisdiction and then follow up if the child advocate feels that it is necessary to be able to do the full investigation of, for example, children's aid societies?

**Mr. Wilson:** Yes, I would. The first choice would be to have the advocate have the same strength and mandate as the Ombudsman. That would be the first choice. But I've been doing this too long, so I don't want to see it lost. I want to take what we have and improve upon it. It's like the ripple effect, so to speak. If you said to me it was the first choice that the advocate had the same powers as the Ombudsman, we'd be giving teeth to the legislation and then it would be much more powerful and much more effective. If we're not going to go down that path, which appears to be the problems that have—I don't want to go there—been complicated for many, many years, then your suggestion works.

But it is essential that there be privilege. I need to impress upon you that if there's no privilege associated with what the advocate does, then too many kids are not going to talk to the advocate or, if they do, they're going to get beaten up by the service providers. I'm not talking like a youth here. I'm telling you from my own experiences that service providers will beat up youth who talk to the child advocate, and it becomes a bargaining chip in the care they receive.

**Mrs. Elliott:** I certainly agree and really appreciate your comments. Thank you.

**Mr. Wilson:** Sorry, I went on there.

**The Chair:** We'll move on to the NDP.

**Ms. Horwath:** I'll be very quick. I really appreciate your walking us through, particularly from your own experience, what will happen if we don't include some of these changes. I appreciate also that you've taken the time to put it in language that helps us to bring amendments forward in clause-by-clause. I'll tell you now that I'll be looking forward to putting some of those amendments. Thank you very much.

**The Chair:** Thank you very much, Mr. Wilson.

#### TIKINAGAN CHILD AND FAMILY SERVICES

**The Chair:** We'll move on to our next deputation, the Tikinagan Child and Family Services, Chief Donny Morris, chief of Big Trout Lake, and Harvey Kakegamic,

chair, board of directors. Good morning and welcome to the committee.

**Mr. Harvey Kakegamic:** Thank you very much for allowing us to present to the standing committee on justice policy. My name is Harvey Kakegamic and I am the elected member of the band council of Sandy Lake First Nation. I am also the chair of the board of directors of Tikinagan Child and Family Services. With me is Donny Morris, chief of Kitchenuhmaykoosib (Big Trout Lake First Nation). Chief Donny is one of the longest-serving chiefs throughout the northern First Nations.

Chief Morris and I are here to let you know how much we appreciate the work of the Office of Child and Family Services Advocacy and to advocate in support of Bill 165. From our perspective, it is very important that the advocacy office be established at arm's length from any government ministry.

We are also asking for the creation of a deputy child advocate position to serve northwestern Ontario, with a special focus on the needs of children and youth in remote First Nation communities. As we will explain, the needs of our children and youth are so critical that they require very special attention from the advocacy office.

By way of background, Tikinagan Child and Family Services is a native children's aid society that serves 30 remote fly-in communities in northwestern Ontario, north of 50 degrees latitude and up to Hudson Bay. Communities range in size, with populations of up to 2,500 people. Tikinagan's main office is in Sioux Lookout, Ontario, with branch offices and community-based services located throughout the territory. We serve roughly one third of the total area of Ontario, being roughly the size of France.

Children and youth in our communities are among the most needy and at risk of any throughout the entire province. They and their families live in desperate poverty. Some 54% of the children report being hungry. Costs of living are up to three times higher than in Toronto, and unemployment levels are as high as 95%. Many communities have severe housing shortages, and in many cases two and three families share the same two- and three-bedroom homes.

Education levels are far below the provincial norm. Children are three to four academic years below provincial averages. Very few of our youth are able to complete high school. In part, this is because our education authorities are funded at about one half of the provincial funding benchmarks.

Our schools have little, if any, special education programs. Two of our communities have no school facility at all, as the result of a closure due to a serious mould problem and a fire. There are no resources to build new schools, and the children there are not attending school. In a third community, some 200 children cannot attend school because of serious overcrowding conditions.

1110

The most tragic condition for our youth today is the terrible rate of suicide. In the past 20 years, we have grieved the loss of over 300 youth as a result of the

despair that surrounds our youth. This despair is a harsh reflection of the legacy of the trauma of the residential schools that several generations of elders and parents have experienced. We often feel helpless to stop this epidemic of suicide.

We see that in other communities throughout Ontario, there is a wealth of children's mental health services to support youth at risk, but our communities do not have such services. Similarly, we do not have child or adult developmental services. Nor do we have the full array of services that are funded through the United Way, municipal recreation and subsidized housing programs and other voluntary agencies.

The only community-based service for children and youth at risk is Tikinagan's child welfare service. And Tikinagan has the highest rate of children in care by population of any agency throughout the province, being more than 10 times the provincial average. Many of the 600 children in our care have serious special needs, including fetal alcohol syndrome, post-traumatic stress syndrome, anger management problems, learning disabilities, developmental challenges and other mental health disorders. But Tikinagan does not have the treatment and healing programs that these children and youth require.

In this context, we have come to rely heavily on assistance from the Office of Child and Family Services Advocacy. Over the past 10 years, chief advocate Judy Finlay and her staff have provided tremendous support, both in terms of getting help for individual children and beginning to address larger systemic issues. There are many examples where special funding and special treatment resources have been made available as the result of their advocacy efforts.

On a systemic level, for example, the advocacy office has worked over the past year in the Wunnumin Lake First Nation in response to serious suicide issues there. Through this support, the First Nation has established a community development plan. With advocacy office support, and funding through the Centre of Excellence for Children's Mental Health, Kinark Child and Family Services began, in 2006, to provide specialized children's mental health services at Wunnumin Lake. Kinark has recently started providing a similar service in Kitchenuhmaykoosib, which is Big Trout Lake First Nation.

We are very grateful for this support. However, there is so much more to be done within these communities as well as in 28 other communities throughout our territory.

At this time, I would like to turn to Chief Donny Morris to make further comments. Thank you very much for your time.

**Chief Donny Morris:** Good morning, gentlemen and ladies. It's an honour to be sitting here to touch briefly on our presentation. As Harvey noted, I have been chief of my community for 10 years and part of council for a number of years. We've been around a long time.

For the past 20 years, I have also worked as a volunteer leader with the youth in my community, taking them

on annual 10-day canoe expeditions from our community down the Fawn and Severn Rivers to Hudson Bay. So I have seen first-hand the difficulties that our youth face and the stresses that they live under.

In my community, over one third of the students in our school have serious learning disabilities, emotional trauma and anger-management problems. We are currently experiencing a major crisis in our school because there are no special supports available to meet any of their special needs.

The Mamow Sha-way-gi-kay-win, the north-south partnership, came about to represent the remote First Nation communities. One of the greatest contributions that the advocacy office has recently made is that of helping to establish the North-South Partnership for Children in Remote First Nation Communities. The partnership includes 14 non-government organizations working with the northern chiefs and Tikinagan Child and Family Services to engage the voluntary sector. We know we can't rely on government to meet all of our needs, and there are many concerned and generous organizations and individuals willing to get involved.

In 2006, Judy Finlay helped to establish the north-south partnership. Since then, our communities have received over \$200,000 worth of donated food, clothing, goods and sports equipment. One organization provided a school water purification system so students would have fresh drinking water. As we all know, in our remote communities, a lot of our systems are contaminated. A boil-water advisory is high on our levels. Another group provided hockey equipment for two youth teams. A foundation donated canoes and camping equipment.

The partnership recently conducted needs assessments in two communities. We are now developing strategic action plans to meet these needs. We will be working with volunteer sector organizations to provide children and youth programs, to develop housing repair and construction projects, to assess community agricultural potential, to support community healing programs and to launch initiatives in other priority areas.

We are beginning to see positive and great potential through collaborative efforts with groups that we never met before. Thanks to the advocacy office for their tremendous support. But these changes are only beginning to scratch the surface of the desperate needs that we have, and we see that the work of the advocacy office has only just begun.

There is a huge gap between our children's needs and the programs that are provided by the Ministry of Children and Youth Services to meet these needs. In this context, it is not appropriate for the advocacy office for children and youth to be accountable to the Minister of Children and Youth Services. The advocacy office must be an independent office with direct accountability to the provincial Legislature. We are pleased to see that Bill 165 would establish such an independent advocacy office.

We will need much more continued support for many years. As remote and isolated First Nations, we are not

well-equipped to advocate within highly sophisticated political environments. We need a strong voice from the advocacy office to make our children's critical needs known to government, to advocate for appropriate funding and to ensure that ministry policies are responsive to our unique needs. We also need a strong voice to help us continue building strong, collaborative relationships with the voluntary sector.

**1120**

While the current advocacy office based in Toronto has done much good work, it still feels very distant and remote from our communities. We really need an advocacy office to be located in the north and designed to be especially responsive to the critical needs of First Nations children and youth.

**The Chair:** Chief, I just want to say there are about two minutes left in your time, so I wanted to make sure that you got your presentation in fully before that 15-minute time period.

**Chief Morris:** Yes. I'll be done in a few minutes.

A deputy advocate position located in northwestern Ontario would have a huge impact on extending the good work that the Toronto advocacy staff have begun.

Honourable Mr. Berardinetti and committee members, we look forward to the time when Bill 165 is enacted and to a time when a northern advocacy office is opened and a deputy advocate position established.

I'd like to thank you for your attention and time for us to make our brief presentation. Hopefully we can work towards this goal.

**The Chair:** Thank you for a very thorough presentation. The committee appreciates your effort coming down here today to speak to us.

## SIoux LOOKOUT FIRST NATIONS HEALTH AUTHORITY

**The Chair:** We'll now move on to our next deputiation, the Sioux Lookout First Nations Health Authority; James Morris, executive director. Good morning. Welcome to the committee. I'm just wondering, before you start, if we can make it a little bit darker in here so we can read the brief. Can everyone on the committee see that? You're okay? I'm the guy with the bad eyes.

**Mr. James Morris:** I was kind of hoping, to save time, whether we could just dispense with that. Do you still want it?

**The Chair:** Yes, by all means. You have your 15 minutes.

**Mr. Morris:** Thank you very much, Mr. Chairman, committee members. My name is James Morris. I'm the executive director of the Sioux Lookout First Nations Health Authority, and I'm here to add my voice of support to Bill 165, the Provincial Advocate for Children and Youth Act, 2007.

In terms of the health authority itself, we service 32 First Nations in northern Ontario, essentially the same communities that Tikinagan serves. We're a partnership with them. We're currently involved in setting up the

programs we have. The reason I'm here is because one of the programs the health authority services is the Nodin Child and Family Intervention Services. We only began to integrate that children's mental health service with money that Tikinagan used to have in adult mental health services that are funded by the federal government.

This is the area we're talking about. This is the area, the size of France, that you're talking about. The area does a lot in terms of costs. Gasoline up there has been \$10 a gallon for 10 years, as far as I can remember. How much is it now? I think it's gone down a bit. I think it's \$8 a gallon now in Big Trout Lake, which is where Chief Morris comes from. I'm from Big Trout Lake myself; that's where I come from.

All of these communities are north of the Trans-Canada Highway. Out of the 32 communities, I think only two or three are accessible by road. The rest are remote. Any time you want to move in the community, you have to fly. Many of these communities are autonomous in their own way. They have their own leadership, their own bylaws, their own languages and dialects, customs and their own traditional territories, which include land outside the reserve. That is really affecting a lot of communities in terms of resource extraction. When the treaty commissioners were up there in 1929, they said, "Oh, no, you can continue to hunt and trap and use your land the way you've done forever. Nobody will be affected." But that's not what we're experiencing today. The minute we step outside the reserve land, we get the police after us.

Children and youth: our greatest need. We have a very young population up north—58%; almost 60% in our communities compared with 37% in the rest of northern Ontario. Our area has a high percentage of youth. Another way of saying it is that 60% are less than 30 years old. They're good communicators too. You'll be talking to a young man this afternoon at 3:30 who's actually travelling with me, but he wasn't booked until 3:30. Some are skilled in traditional activities. They're very proud that they're able to hunt and trap and that they're finding new ways to educate themselves. More and more young people are taking the time to make sure they get educated, but it's been a long, slow and painful process and we've lost a lot of young people in the process.

This is a chart that my researchers have provided to show you our population. You'll notice at the bottom, there's a very high percentage of young people.

One of the communities that's really been experiencing a lot of problems is Pikangikum First Nation. You've probably heard about them. When I was elected as a deputy grand chief of the Nishnawbe-Aski in 1988, their population was 1,200. When I left NAN in 2000, 12 years later, their population was over 2,400. For a community that size, they have a pre-natal load of 66 pre-natals at any given time, constantly, so the young population is just rising.

Some of the statistics that the chiefs and councillor mentioned are:

Some 53% of youth have less than a high school diploma, compared to 33% for everybody else in northern Ontario. The suicide rate among our young people in that area is the highest in Canada. It is five to six times the rate among non-aboriginal youth. There are over 500 children in care on the Tikinagan. I don't know the number; it's higher every time I talk to the ED. Many of the students in the communities who are not in care cope with a wide range of physical, learning and home-related challenges.

Over 80% of the students, Harvey Kakegamic says, are two or more grades behind. This causes great problems for our kids when they get to high school. It means that when they enter grade 9, they should really be in grade 6 or 7—incredible challenges. I was very glad to see some high schools try to deal with this by having extra years or special classes for those students.

A lot of our students have significant auditory problems. Nobody is dealing with those. As an agency that's just beginning to set up a mental health service, we haven't gotten there yet. Twenty-three per cent of students have physical problems that interfere with their learning, and 28% of the students have significant psychosocial problems. In the community Harvey Kakegamic comes from, in that school, there are four kids there who cannot hear—they're deaf—and nobody has dealt with that yet. If that happened here, you can be sure there would be somebody dealing with it, but the point of the matter is that there are no services for those children where they are. Sixty-four percent of the children stated that there were times in the past three months that they did not feel safe in their communities.

These stats come from our special education study that was done by Dr. Mary Beth Briggs out of Thunder Bay, and that study is available for anybody who wants to see it.

Children and youth are grossly underserved compared with others in the province for diagnostic treatment for psychological, special education and physical needs. That's basically due to the fact that jurisdictional issues have prevented the federal government or the province from providing those services. Under the 1964-65 welfare act, only child welfare is provided. It does not include children's mental health or the long list of services that everybody else gets.

#### 1130

That has forced us to come up with something that we call the Jordan principle. We recognize that jurisdictional issues have impeded care for our kids. When I was in Ottawa, the senators there told me that the only result you get when you mention jurisdiction is that nothing happens. The Jordan principle basically states that wherever that child ends up, you are responsible for providing services there without resorting to legislation. You look after the needs of the child first and deal with jurisdiction afterwards.

The health services imbalance in the province: I think in 2004 Ontario had a budget of \$29 billion or something like that; this is just in health. Only about \$12 million

made it into our communities. Considering the fact that the health transfers from Ottawa include this, we don't think we are getting our fair share of that money.

One of the things that we noted in the North-South Partnership material is that they said that there has been no sudden disaster here: "It's a gradual disaster that has emerged, unfolded and been propagated, whether it's intentionally or by negligence, by people that should know better, by people in power, over a long period of time." And the 1965 welfare agreement not including children from Ontario, to me, is a classic example of that. It means that for 40 years, both levels of government have not provided children's mental health services simply because that line item was not included in the agreement. The way I look at it, you owe our kids 40 years of mental health services. That's how they see it. I talk to these children. You'll be talking to one of them this afternoon.

The role and work of the child and youth advocate is very essential because we have large numbers of children under government care, as many of our children and youth require special mental, physical and educational assistance that they are not being provided now, and because of the unique jurisdictional issues which impede solutions for our children.

I don't know if you are familiar with the integrated services for northern children program; they call it ISNC. Until recently, about two years ago, there was a clause in that program that said "except for status Indians living on reserve." So the money under the Canada health transfer agreement flows from Ottawa to Toronto, and then somewhere along the way, it disappears before it gets to our kids. That's the clause that's normally used to say they don't provide it. The federal government doesn't provide that service either, so our children are nowhere.

**The Chair:** Mr. Morris, I don't mean to interrupt. There are about four minutes left in your presentation time of 15 minutes that we have for each presenter. I'm just glancing at the booklet here, and I notice that you're doing a very thorough presentation, which is great, but I'm just wondering if you could highlight the key points that you think we should know about in the next four minutes.

**Mr. Morris:** Actually, I'm finished. The rest is just the recommendations.

**The Chair:** Okay. You can go ahead; you still have four minutes.

**Mr. Morris:** The recommendations are that:

—There should be a separate and distinct child and youth advocate for northern First Nations.

—Advocates must be able to deal with all children, not just those in government care. The children who have special needs is a classic example. I think the Ontario government recently changed the legislation to say that kids who are Chinese do not need to come into care to get services, so we need to deal with that.

—You need to find out the real needs for advocacy for First Nations youth in our area, because they are a little

bit different than they are here. Kids living in Toronto don't have any jurisdictional issues. We do.

—You need to consult with First Nations children and youth in all matters pertaining to youth.

—You should give the child and youth advocate investigative powers.

The rest of my presentation is just expanding on those recommendations. So that's really about it.

In conclusion, we support and endorse the office and work of the child advocate. We endorse strengthening the advocate through Bill 165. We recommend the designation of a First Nations northern child and youth advocate whose office would be located in the north. You're dealing with people who come from a different culture, different language. You need somebody who understands the culture and the people. And once again, we urge that the advocate be given investigative powers.

Thank you.

**The Chair:** A very good job. Thank you for the presentation: very thorough.

We're going to move on, then, to our next presentation, and we thank you again, Mr. Morris, for your presentation.

#### ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

**The Chair:** I would call on the Ontario Association of Children's Aid Societies: Dennis Nolan and Jeanette Lewis. Good morning.

**Mr. Dennis Nolan:** Good morning, Mr. Chair. Thank you very much for having us. I'm Dennis Nolan, president of the Ontario Association of Children's Aid Societies, and with me is Jeanette Lewis, executive director of the Ontario Association of Children's Aid Societies. Our association represents and advocates for the children and the workers and members of 52 of the 53 children's aid societies in Ontario.

We really appreciate this opportunity to present to the standing committee on justice policy regarding Bill 165. We will make a number of recommendations which we believe will help to strengthen the bill. We hope you find them useful as a committee.

The OACAS endorses Bill 165 in its objective to create an independent child advocate who reports directly to the Legislature. The OACAS believes the protection of children is paramount to the delivery and provision of services in child welfare. An independent child advocate would enhance this protection. We expect that an effective, independent child advocate whose mandate includes all vulnerable children will not only provide better protection for children but will also enhance the potential for decreasing the needs in child welfare. We do, however, have a number of suggestions for amendments to improve the bill.

Our comments relate to the purpose of the act and the role of the advocate; the omission of reference to aboriginal and First Nations children; the appointment process and who we hope you will make sure participates

in that process; the reporting process; the proposed powers of the advocate; the scope and mandate of the advocate; and the need for adequate, dedicated resources for Ontario's children, and specifically for child-welfare-served youngsters.

I'm going to ask Jeanette to provide you with the detail of some of those suggestions.

**Ms. Jeanette Lewis:** I'm Jeanette Lewis, executive director of the Ontario Association of Children's Aid Societies, and I'll speak first regarding the purpose.

We believe it is important that the act help children to speak for themselves. Children's voices should not be appropriated but rather supported toward becoming capable self-advocates. It may be that this is intended in the act; however, the language in this proposed legislation is not clear. We believe, and our youth have endorsed this view, that an independent provincial child advocate should protect and nurture the independent voices of children and youth. This change would benefit those receiving services under the mandate of the advocate's office.

Before we go into our further comments, we do want to raise the serious omission regarding aboriginal and First Nations children. There is no reference in Bill 165 regarding how aboriginal and First Nations children will be served by the advocate. OACAS believes it is essential to develop a special process to establish a service system for aboriginal children and youth. Aboriginal children, especially in the north, experience extreme challenges, suffer from a lack of services, poverty and Third World living conditions. We can say no more. It is not our place to say how this should be done. But this must be addressed, and the process to do so must be determined by aboriginal and First Nations communities.

1140

Secondly, when you consider appointment, expertise is a critical component in systems of accountability and oversight. The current child advocate acts as a good model for the province in providing service to clients by advocates who have expertise in the various sectors providing children's services. OACAS supports further entrenching and expanding expertise in oversight, which benefits children and the public. We also believe that a strong advocate is one who has all-party support, so the appointment process should provide for this. Finally, meaningful youth participation in the selection process will ensure that the right individual is appointed, one who can relate to youth and who youth perceive to be able to take on this important role.

Thirdly, context matters. Reports and findings presented without context are not helpful to the child welfare sector, the public or to children. OACAS supports full access to documentation, records and immediate and direct access to children, in an effort to provide a full and three-dimensional picture to the child advocate, which can only help in arriving at balanced and considered conclusions. Comments have been made about how the advocate should make reports public and whether those who are the subject of reviews should have

prior knowledge of the content of the reports. We believe that a good model has been established by the Auditor General of Ontario, who provides the opportunity to discuss the findings but is not influenced by the ministries or programs that have been audited. This process allows for greater understanding of the report content by all parties and also ensures that immediate corrective action can be taken without waiting for the final report to be released.

On the subject of the powers proposed for the advocate, we support the bill as drafted. OACAS agrees that the advocate must have private access to children in care without delay. Consideration must be given to other methods of access beyond face-to-face and phone contact, such as the use of new technology, the Internet and other emerging technologies. In our written submission, we also stress the importance of making this new position well known to children and have suggested advertising in all residences and places of business under the mandate and also in all public and private schools in Ontario.

We have also noted in our submission that not all child and youth sectors are the same. We raise the issue of dedicated resources for child welfare, for youth justice and for other major programs that fall under the advocate's mandate. It is important that we recognize how blurring these sectors is harmful to the individual needs of children and youth, unhelpful for professionals working in these fields and confusing for the public. A successful provincial child advocate will have to be provided the resources to ensure expertise in different sectors, including aboriginal services, and understand the importance of communicating the distinction between these sectors to the public. Ideally, local or regional offices would be established to allow children and youth more immediate access without having to wait for the advocate to travel from Toronto.

I'll turn this now to Dennis to make our final verbal submission.

**Mr. Nolan:** We believe that all vulnerable children in Ontario should be within the scope of this legislation. The scope of the proposed advocate must explicitly, in our view, name these children so that there can be no debate as to whether they are deserving of the support of the provincial child advocate. Bill 165 must apply to all children receiving services of government, along with children receiving care from private services and youth over 18.

I'd like to make a list of those children: children with developmental handicaps and delays; those needing mental health services; clients of youth justice services, including those in holding cells, those being transported and those receiving non-custodial services; children in education with special needs; unaccompanied minors; children in private or public day and overnight camps, including sports camps; children boarding in private schools; children staying in hospitals, including child and adult psychiatric wards and mental health beds; children in schools for the deaf and the blind and demonstration schools.

OACAS and its member agencies take very seriously our role to protect children and support families in need. We believe that Bill 165, with amendments, can increase this protection of children and youth.

OACAS would welcome the opportunity to share our expertise and experience by participating in further consultation with the Ministry of Children and Youth Services and with the provincial child advocate in an effort to ensure that the highest quality of service is provided to the province's children and youth.

Thank you very much.

**The Chair:** Thank you for your presentation. We have time for one minute per party, because we have one last presentation before 12 noon. We'll start with the Progressive Conservatives.

**Ms. MacLeod:** It's very nice to see you, Dennis and Jeanette. It's always good to see somebody from Ottawa in front of me here in the big T.O., the Big Smoke, as we call it.

**Mr. Nolan:** I was in Ottawa last night.

**Ms. MacLeod:** Oh, good. I'm hopefully getting there tomorrow, so I'll see you there.

A great presentation. You thought this out, and I really appreciate it. In fact, Christine, my colleague from the Conservative Party who is our Attorney General critic, and I were talking about the scope and mandate. I really appreciated your reading into the record the excluded groups of children and youth who need to be included in this piece of legislation. Had there been adequate consultation prior to being here today, we might have seen that; it might have been included in the bill.

You talk about investigative powers and you don't support the independent advocate having that role. I'm just wondering, do you support the Ombudsman having investigative powers into the CAS? I know I'm putting you on the spot, but I'm just curious to have that on the record.

**Ms. Lewis:** Our association has been on the record citing that we believe the Ombudsman already has oversight responsibilities with respect to child welfare. The recent changes to the Child and Family Services Act give the Ombudsman oversight of the Child and Family Services Review Board, including their work; certainly that's where client complaints about the work of children's aid societies are directed now. I believe that under Suzanne Gilbert, the new chair, this process is being revamped and is now functioning.

**The Chair:** Thank you for that. We'll move on to the NDP.

**Ms. Horwath:** Hi, and welcome. Thank you for your remarks. I was pleased to see that many of the issues that you raised are very much in sync with a number of the other presentations. I think that's a very positive thing.

On page 4 of your written submission, and you spoke to it verbally as well, you talk about the issue of reporting, the controversy around the extent to which it should be enshrined in the legislation, the requirement for the dialogue with service providers during the investigation—or not “investigation”; I guess that's the bad

word—during the review or looking at various issues. I like the way you've addressed it. Maybe it's a matter of clarification. What I take you to be saying here is that although you understand that there have been some stakeholders suggesting that this clause might restrain the advocate, perhaps it's okay to keep that out explicitly but acknowledge the fact that this is the way things are done through the Auditor General and even the Ombudsman, that it's always a back and forth; that's the way this job gets done. So it's not necessarily a bad thing to remove that clause that explicitly indicates that there has to be a dialogue. Am I misinterpreting?

**Ms. Lewis:** No, I think that's accurate. Thank you.

**Ms. Horwath:** Thank you very much. I appreciate that.

**The Chair:** We'll move on to the Liberal Party.

**Mrs. Van Bommel:** Thank you for your presentation. You talked about ways of making sure that children are informed about the advocate and accessing the advocate. What current policies have you got in place for children so that they can talk to the advocate, can get in touch and do so with privacy and without concern about possible retaliation for having complained?

1150

**Ms. Lewis:** Certainly the residential providers do have brochures advising children of the advocate's office. There's also a requirement that, on admission, children are verbally advised and given those brochures. We certainly work closely with the providers to ensure that there is privacy and that there is no retribution. I think that's very essential.

In our report, we recommend that there be some further communication with children. We think that access to the advocate should be promoted in every school. That's where children are: They're in high schools, they're in public schools, they're in private schools, and that's where they would pick up the brochures. On admission, they get this, but it well be mislaid or they may have forgotten about this right. So having that access in schools would be very, very important in terms of children being able to have this right of contact.

We also think it's very important that we recognize that children today use technology very differently than we might or than might have been the case 10 or 20 years ago. We would really promote having some kind of more advanced technological way of kids contacting the advocate, and very quickly. If we wait for an advocate to get to see a child, particularly a child who is far away from an office, something further may have happened for that child that could put that child at risk.

**The Chair:** Thank you very much for your presentation, Mr. Nolan and Ms. Lewis.

#### DEFENCE FOR CHILDREN INTERNATIONAL-CANADA

**The Chair:** We'll move on to our final presentation this morning. It's the Defence for Children International—Canada, Agnes Samler, president, and Matthew Geigen-

Miller, board member. Good morning. Welcome to the committee.

**Ms. Agnes Samler:** Good morning. I'm president of Defence for Children International-Canada. I'd like to begin, on behalf of our board, with congratulating this committee for the non-partisan approach it has taken to this bill and to the issue. I really believe that both this bill and the advocate need to have the support of all parties, so that's very important to us.

Secondly, I think you've made a serious effort to include the voices of children and youth. That was highlighted by our volunteer executive director, Les Horne, when he addressed the hearing yesterday. We know it's not perfect—we do know that—but you're breaking new ground here and I think we need to acknowledge that and to applaud it.

Those are two issues that are really critical for DCI-Canada.

I'd like to now introduce you to Matthew Geigen-Miller. Matt started off as a youth adviser to Defence for Children International and is now a full member of the board. He is also a student at Osgoode law school and he has spent—I've been trying to figure this out—four years working on this issue and is passionate about it. I think you will find that his report is thoughtful and has been well researched, and it really has a focus on trying to make this legislation as strong as possible for children, particularly the vulnerable children that so many people have talked about today. We're very proud as DCI to put this forward this morning. I'll now turn it over to Matt to talk more specifically about the issues.

**Mr. Matthew Geigen-Miller:** Thank you, Agnes. For the record, my name is Matthew Geigen-Miller.

Mr. Chairman and honourable members of the committee, thank you for the opportunity to appear today. I hope you will forgive me for skipping over a lot of pleasantries that I wanted to get into in congratulating the minister and congratulating the members of the opposition, particularly the critics for children and youth services, for their work in bringing this forward. I hope you will not get the wrong impression from my presentation, which is really going to be oriented toward improvements to the bill. We have much praise for the bill. It's because of the short time I have right now. But if you look at the paper, we have praise for a number of elements in the bill.

First, I'm going to turn to what we have been calling the groups excluded from the advocate's mandate. By now you've all heard that some groups currently served by the Office of Child and Family Service Advocacy are not in the legislated mandate of the new proposed advocate; specifically, students in provincial schools for the deaf, blind, and demonstration schools; young people held in police or court holding cells, and young people being transported to or from police or court holding cells; and young people receiving non-custodial services such as community supervision and probation under the Youth Criminal Justice Act. A lot has been said about this already. I will make only a couple of additional points.

First, the independent third-party review of the advocacy office, which was commissioned by the government, recommended that the advocate's legislated mandate should be the same as what the current advocate does. Now, this doesn't preclude some of the additional groups that have been suggested, but at a minimum, the groups currently served by the advocacy office should be in the legislated mandate.

Second, two of these excluded groups—students at provincial schools and young people in holding cells and in transportation and so on—began to receive services from the advocacy office following government reports that raised serious concerns about safety issues and rights issues. So the circumstances leading up to these two groups starting to get advocacy services—it was not a hypothetical issue that these people might be vulnerable; there were reports of rights abuses and very specific problems that were happening.

Thirdly, it is not enough to add these groups to the advocate's mandate through regulation or through a memorandum of understanding. Regulations, as we all know, are made by cabinet and they are repealed or revoked by cabinet at any time. If the new advocate is dependent on the support of cabinet in order to serve these groups, then that's not an independent advocate; that's an advocate dependent on the executive.

I've recommended an amendment to entrench these groups in the legislated mandate. We have heard a lot about measures to ensure that young people in facilities out of home care have proper access to the advocate, and I'm just going to raise a few of the quirks of Bill 165 as it is drafted.

Children and youth in the care of a children's aid society will have the right to be informed of the existence of the advocate and the right to receive a visit from the advocate, but they have no right to make a call to the advocate they've been informed of in order to ask for the visit they're entitled to.

Second, young people in what used to be called phase 2 youth justice custody—that's older youth—don't have any rights to call the advocate because they are not in the Child and Family Services Act; they're under different legislation. And if we do put in some of these excluded groups, like students in provincial schools, there are no rights in this bill for them to call the advocate either.

I want to emphasize that most people in residential care depend on the facility they live in to call the advocate. For example, young people in secure mental health settings, custody facilities and similar facilities rely on the institution to give them access to a telephone. Even many group homes, which many consider to be more of a community setting, don't allow young people who live in them to carry a cell phone.

Can institutional staff be trusted to decide who should call the advocate and how soon they should call the advocate? I think that's a very good question to ask the youth who are going to appear here this afternoon and what their experiences are with that. In the meantime, I will just remind you that Sarah Dagg earlier this morning

correctly pointed out the case of James Lonnee, who, while being held in a Wellington detention centre, was placed in a small isolation cell designed for one person—and it was a dreadful cell even for one person; it should never have existed—but he was not alone in that cell. Contrary to facility policy, he was placed in a cell with another young offender, who threatened to harm him. James asked to call the advocate. The institution said no, that he wasn't behaving himself and he needed to settle down before he was going to be calling anyone. A short while later, James Lonnee was dead. He had been beaten to death by that other young person. All of this came out in the inquest into the death of James Lonnee that took place from 1998 to 1999.

I've recommended amendments to give young people in residential care a positive right to call the advocate privately and without delay. There should be no judgment about how soon the call can be made. And we should be placing a positive duty on workers, as exists in similar legislation in other provinces, to ensure that a young person who asks to make the call gets to make the call.

In terms of the advocate's access to young people, we have heard a lot of comments about subsection 14(4) of the bill, which places a restriction on the advocate's ability to enter facilities. I think it's important to put this in context. Nowhere in the bill does it say there is a right to enter facilities. The only time entering facilities is mentioned is a restriction. This sends the wrong message about the advocate's ability to enter facilities to talk to young people. The ability to get into facilities is absolutely essential, particularly in the more secure institutional settings where a young person can't leave in order to access the advocate elsewhere.

**1200**

There should be no leeway for an institution to cancel a meeting between the advocate and a young person on the grounds that the advocate didn't give reasonable notice. Anyone who is not an official advocate who's ever done work with people living in institutions, who doesn't have some official status, knows that quite often you show up at an institution and you find out that plans have changed, there's a lockdown, there's been some security issue or whatever, and you can't get in. Anyone who doesn't have a legislated right to enter doesn't get to enter, a lot of the time. This is something that happens all the time.

It's also very important to note that Bill 165 recognizes and affirms the importance of systemic advocacy. The ability to work with an institution proactively or to perform a review of an institution in response to systemic concerns is very important. That requires a free-standing independent right to enter a facility, not just if there's been a visit requested by a young person living there. We should not be giving institutions a veto over whether or not those kinds of facility reviews are going to take place. I've made a recommendation for an amendment in this regard as well.

I'm also concerned about the advocate's lack of access to records and documents in Bill 165. Although the main

source of the advocate is and should be the voice of the young person for whom the advocate is advocating, official records of various kinds often play an important role. In the case of individual advocacy, Bill 165 gives the advocate a limited right to access personal information about a young person if the young person would normally have access to that information. I encourage you to ask the young people who appear this afternoon what kind of access they have to their records. I think you will hear that it is very little.

In any case, it's not just their own personal files that an advocate might need to access. Here's one example. A young person in an institutional setting is placed in secure isolation, seclusion, segregation—you get the idea—a locked room. The young person wants to complain about this. Being placed in segregation is a common source of complaint, both in children's facilities and in adult institutions. The advocate needs to find out, to support the young person making this complaint, how long they were in the cell, so you ask the young person, "How long were you in the cell?" What are they going to do? Look at the wristwatch they're not allowed to wear in an isolation cell or look at the clock that isn't on the wall in an isolation cell? No, you need to look at the facility logs to see, okay, the young person was in there for eight hours, and then be able to look at things like policies and procedures manuals of the facility to see whether that was in keeping with the facility's own internal policies and procedures. So there are a number of other documents besides the young person's own personal file that are important in advocacy, both individual advocacy and systemic advocacy like facility reviews.

I've made a recommendation about this. What I've said is that we need to have essentially unencumbered access to records—few exceptions. I'm not talking about breaking solicitor-client privilege or getting at cabinet documents, but I'm talking about virtually any document in the care or control of a service provider or a facility. We can balance any concerns about privacy by making sure that there are very, very strict confidentiality provisions in place.

**The Chair:** You have about two minutes for your wrap-up.

**Mr. Geigen-Miller:** Thank you. I'm not going to duplicate it much, but I agree with the people who have presented that we need very strong protections in place for confidentiality of information collected by the advocate. My recommendations are in our brief, and a number of other presenters have made very good points about this as well.

I want to emphasize that complex special-needs youth are not specifically mentioned in the bill. This is important, because they don't always fall under the category of an existing service and because providing advocacy to complex special-needs youth right now occupies such a huge amount of the advocacy office's work. How is the new advocate going to justify the appropriations needed from the Legislative Assembly to continue doing this work if there isn't a line anywhere in the bill that says

“complex special-needs youth”? It will be the legislation that will provide a basis for resource allocation to the new advocate, and it has to be in there.

I want to comment on the union issue. A number of other speakers have commented on it. Saying that the staff in the new office should not be in a public service union is not an anti-labour position. I consider myself to be very pro-labour. I don't cross picket lines. If I ever did, it would have to be life or death and then compensated with a box of doughnuts.

I just want to make clear that an advocate, many times in the past, has had to cross picket lines, because when there is a public service strike the circumstances in the facilities can get very bad. I've had personal experience with this when I was a young person and there was a young person who spoke yesterday about it as well. We shouldn't be having them in the same union. It creates a conflict of interest that the advocate shouldn't have to be in.

Finally, on the question of preamble, I have circulated my own personal—not DCI-Canada's—suggestions for the text of a preamble and I would welcome questions about that.

As far as further questions are concerned, I'll take them now.

**The Chair:** Thank you. Unfortunately, we have reached the end of our time. Members can still question you after we recess here, which I will do now. I want to thank you for your presentation and thank everyone this morning.

We are now recessed until 3:30 or after routine proceedings.

*The committee recessed from 1207 to 1538.*

**The Chair:** Good afternoon, ladies and gentlemen. I'd like to call back into session the standing committee on justice policy. We are back to the deputations.

### CONNERY BEARDY

**The Chair:** Our 3:30 deputation is Connery Beardy, from the Sioux Lookout First Nations Health Authority and Nodin Child and Family Intervention Services. Good afternoon. Please have a seat. Just so that everyone knows the rules, you have 15 minutes maximum to make your presentation. If you don't use up all your time, there may be some questions from members of the committee. Welcome.

**Mr. Connery Beardy:** First, I'd like to take this time to thank you all for having me do this presentation today. I'll start off by introducing myself. My name is Connery Beardy. I'm from Sandy Lake First Nation in north-western Ontario. I'm in grade 12, and I am enrolled in Queen Elizabeth District High School in Sioux Lookout, Ontario. I am 19 years old. In the spring I will be graduating and by fall I will be attending Confederation College in Thunder Bay. There's a photo of me when I first entered high school in grade 9. A lot has changed since then, and we can move on.

On the next page there are some photos of Sandy Lake. There's the traditional gathering, a powwow. You

see there are open fires where we make tea, have a little social get-together and talk, and there's a photo of an elder.

My goals in the future: This summer I'm hoping to get into the Bald Eagle program, which is a military training program. When I am done college, I hope to find a job and build up my network so I can make some connections. In the future, I hope to start my own business back home in my own community of Sandy Lake: a pool hall/arcade, more of a place where youth can get together in a positive environment.

I wish to continue my grass dancing, which is part of my culture—it's a lot of fun, good exercise—and then one day have a healthy family and a healthy community. Here are some photos of healthy families, children and both parents.

Here are some of the obstacles I had to face in my life. When I was 14 months, I was adopted by my aunt and uncle, which was customary care. In elementary school, from grade 3 to grade 7, I needed some help, some special education that would help me get through school. Throughout those years I've been getting help with my literacy. Throughout those years I faced a lot of bullying, racism and other sorts of issues, problems, I had to face.

At the age of 14, I had to leave my home community where I'd grown up and been all my life. I had to go to a modern-day residential school called Pelican Falls First Nations High School. I have attended that school for two and a half years. In my final year, right before I graduated, I dropped out because of problems. I got back into school, went for another year and I'll be graduating this year. Pelican Falls is actually a great school, but there were some problems from back home that I carried with me, which was my reason for dropping out.

Some of the things my friends had to face: Half of them had already dropped out of school. My best friend tried to commit suicide, tried to take his own life, but I was there to help him. I talked to him. He's still back home. He's one of the many who dropped out of high school in grade 10. In that community, grade 10 is the highest education level you can get in school. After that, you quit, get a job or you can attend a learning centre. But I chose to leave home to further my education.

There, I have many female friends and a lot of them now have children. Quite a few of them have one or two children and they are single parents.

I have dealt with a lot of alcohol and drug abuse. I've been drug-free for the past five months and alcohol-free for the past two years. I'm really trying to get my act together.

A lot of the youth in my community are living day by day. They want to get through each day. They're not really thinking about the future or what will become of them or what they want to become.

In one community it's very hard—not in mine but in another—and that has a real impact on them. Every morning you would have to walk out your front door, and in your front yard there are graves of family members, just right there in front of you, also in the backyard, and

that is very traumatizing, very disturbing. No child or youth should be exposed to that, and they grow up with it. The generation before me has done it and now they are putting it on mine and the ones after me. They're putting it on their children.

To me, this place is a Third World country. They have poor housing, and teenagers have to actually sleep in shifts. Teenagers sleep all day so their parents can sleep at night. They sleep at night because they have to go to work in the morning to provide for them, and teenagers are left alone. There isn't much care for them. There's nothing for them to do in these communities. There's no safe haven, I guess you would call it, no positive environment for them to be in. They're basically out all night, and places where you can go usually close around 10 in towns and cities, or even midnight.

Where I come from, there is nothing like that. There is no building that's safe to be in. You're either in your own home, which is also a negative place, or out and about. Where I live, it's a wilderness. There are no street lights. There's no place you can go. Everything is shut down after 11 o'clock. It's dead; it's quiet.

Living in the north is an obstacle. It's very remote. There's nothing there for us to do. Like I said, there is no place for us to go. There's housing and there are social problems. Some community members are so bored that they turn to alcohol and drugs for excitement, for something to do. Their kids are depressed. It's so hard to live in a place like that.

One summer I was home for two weeks and there were five cases of arson, five houses, people's homes being burned down, and at least one house per week after the first two weeks for the entire summer. I'm so happy it wasn't my home, but it's sad that they were someone's homes and now they're homeless in a place where there are hardly any homes to go to. There are homes being reused and basically renovated, but they still aren't good to live in.

Since we are so remote, it's very expensive to get new things, to get materials to build homes with to my community. We have to fly in everything, except in winter, when the ice is frozen and we can drive. That's the cheapest time when we can actually have things brought in.

It's very different now from when I was younger and going to kindergarten and elementary school. When I was in kindergarten, there were four classes and we went all day. But now, when my nephews and nieces go to school, in my community there are six classrooms, each classroom has over 20 students, and they only go for half a day—I'd say about 30 in the morning and 30 in the afternoon, six out of six; six classrooms with at least 60 students going through their day.

The population of teenagers there is rising and there's not much for us to do, so we turn to native things for excitement, fun and entertainment. It isn't all bad. You see in the pictures here that we enjoy ourselves by going camping, having this connection with our past, where we

didn't need all of the stuff we ask for now. But we've lost that connection. We're slowly regaining it.

Small communities are nice. You get to know everybody. It's nice and peaceful. If something goes wrong, everybody knows, but at the same time everybody can help. You just feel much more of a community. You have that bond with friends, with everyone: elders, adults and the children. It's more like one big family. At least we try to be.

A youth advocate is needed in the north to ensure that we are not forgotten, because we feel that we have been forgotten. We have been placed on reservations over 100 years ago just to be forgotten. That's how I feel about it. We were put there for a reason, away from all of this here around us. We have no connection. We need someone there for the youth to go to when they have problems. Right now, we have basically no one.

1550

The bill states that at the moment all youth can be helped, but with this new bill it will only be specific people. I think these specific people need more attention, but not all of the attention. It's not right to exclude everyone else just because they're not in care or because they have some physical or mental disability.

Another reason we should have an advocate is to keep in touch. If there were a youth advocate in my community who can connect to someone in a town and then into a city and then to here, it would just be a basic chain of command. We don't have that connection, but it would be nice if we did.

**The Chair:** You have about two minutes left in your presentation. I just wanted to let you know in case there's anything that you want to summarize or wrap up or highlight.

**Mr. Beardy:** I think that's it. If you have any questions, I'd be happy to answer them.

**Ms. MacLeod:** Mr. Chair, I would just ask, under these circumstances, if we can allow him to finish his presentation. He's come all this way.

**The Chair:** How much longer were you going to go for?

**Mr. Beardy:** Five minutes at the most.

**The Chair:** Okay. We've got a long list of deputations here and I don't want to hold up the other people. So can you perhaps go just two more minutes?

**Mr. Beardy:** Sure.

**The Chair:** Thank you.

**Mr. Beardy:** Bill 165 should really cover all youth everywhere, not just these specific people. We should have an office in every community with at least one person to operate it, because we only need one person to go and talk to. If I were to have problems, I wouldn't want to be shuffled around from person to person. I would like to see one person, and if that person couldn't help me, I wouldn't mind being shuffled around to a few people, not just person after person after person. As long as we have one place where we can go to seek help, it would be awesome.

This advocate should be someone of that community, wherever it is, someone who's well known by the community, who is a positive role model and is very approachable, so it would be easier for younger people to go up to this older person. Sometimes it's really hard to talk about these things. Every child should be able to know who the advocate is and how to contact them, even if it's as simple as a phone call or just going to their door and knocking on it.

In conclusion, I hope you will continue to consult with youth like me and take our opinions under consideration when you're passing the child and youth advocate bill. Child and youth advocates are needed in the north to ensure that our youth can become the best they can be. Thank you.

**The Chair:** Thank you very much, Connery. Actually, you stopped right at the 15-minute mark. I appreciate your presentation. On behalf of all of the committee, thank you for coming here and expressing your views.

**Mr. Beardy:** You're welcome.

**Ms. Horwath:** Mr. Chairman, I have a question. Can I just ask you, in terms of the agenda: There are a couple of to-be-confirmed slots on the agenda. Are they confirmed or are they empty slots?

**The Chair:** At this point they're empty.

**Ms. Horwath:** They're empty, so there's nobody going to be here at 4 or at 4:30 in those slots, at this point in time.

**The Chair:** That's correct.

**Ms. Horwath:** Then I would ask, Mr. Chair, as we go through the presentations, particularly from young people, that we use up the time that was slotted, and if it is not going to be used by an official presenter, that we give that time to the voices of young people in these presentations this afternoon. So I would like to have either a vote or agreement from the committee. We're here till 6. The last scheduled presentation is at 5:45. There's at least half an hour. If there are two presentations where nobody's slotted, that we then give an opportunity for the committee to engage with these youth.

**Ms. MacLeod:** The official opposition supports that, Mr. Chair.

**The Chair:** Any other comments?

**Mr. Zimmer:** I leave this matter in the Chair's hands. I'm happy with whatever you decide to do.

**The Chair:** All right. Why don't we say between five to 10 minutes for each?

**Ms. MacLeod:** I agree with my colleague from the New Democratic Party. This young man has travelled quite a ways, and I think it would behoove all of us to take a few extra minutes with him. He did a remarkable job.

**The Chair:** Why don't we do this, then? We'll just go around the table and have roughly two minutes per party. The order that I have is NDP, Liberal, PC this time. Ms. Horwath, if you want to go first for the NDP, then we'll go to the Liberals and then to the Conservatives.

**Ms. Horwath:** We'll try to be respectful of your need to move the committee along as well. I appreciate that, Mr. Chairman.

Connery, I just want to say how impressed I am not only with the fact that you came here and shared some of your feelings and some of your realities with us but that you're doing such a great job as an individual. You're succeeding in so many ways to deal with some of the challenges you've been dealt.

You might know that the bill, as it sits now, does not ask for, does not speak of, having a specific deputy for remote northern First Nations communities. Is that something you would like to see changed? Would you like to see that role actually put into the legislation?

**Mr. Beardy:** Yes, I would.

**Ms. Horwath:** Do you think that would be helpful for your own community and other communities to have a location closer to home that feels more connected, that in fact is likely going to be staffed by people from First Nations backgrounds and heritage?

**Mr. Beardy:** Yes.

**Ms. Horwath:** The only other thing I wanted to say is that I think you've done an absolutely fabulous job of showing us a little bit about what happens in your community. We often hear odd stories here and there, but by your coming here and pretty much putting your soul on the table and showing us the challenges you're facing, I think that's extremely valuable to me as a person and as a legislator. I just want to say I appreciate that very much. So thank you.

**Mr. Beardy:** You're welcome.

**The Chair:** We'll go to the Liberal Party.

**Mrs. Van Bommel:** Thank you very much, Connery. In going through this, your own personal strength comes through very clearly. I can certainly tell from the emotion that you brought into this that you've overcome a lot, and you need to be congratulated for that.

I get the impression—earlier this morning we had Chief Donny Morris come in and talk, and he made just a little comment about a 10-day camping-canoe trip that he did with the young people of his community. I know from my own children and grandchildren that having an identity and having that sense of who you are is very important.

You talk in your presentation about identifying with your culture. Those kinds of things are very important, I find, for young people. Do you have the opportunity to bring that for yourself and to your peers in your communities, where you have an opportunity to find your own identity, your past, your history, and that becomes part of who you are today?

**Mr. Beardy:** Yes. But I started to really find myself when I left home. When I left my comfortable environment and entered a different place, a different world, I started to really define myself, what I want to be and who I want to be. It took a lot of challenges to do that.

**Mrs. Van Bommel:** You're doing great. You really are.

**Mr. Beardy:** Thank you.

**The Chair:** Ms. Smith?

**Ms. Monique M. Smith (Nipissing):** I want to join all of the members on the committee in commending you on the great presentation you made. I just want to agree with you, on the second-last page, that life in the north can be great. I'm from North Bay, not quite as far north as Sandy Lake, but certainly we enjoy a great life in the north. I'm hopeful that you will continue to enjoy a great life in the north.

1600

I wanted to ask you about Confederation College. You plan on going in the fall. Do they have a native support program at Confederation College? Do you know?

**Mr. Beardy:** No, I'm not sure.

**Ms. Smith:** Have you been in contact yet with anyone in the program?

**Mr. Beardy:** No, I haven't made any contact.

**Ms. Smith:** I know we do at Canadore College in North Bay, so I hope that they do there as well and that you're able to link up with the folks there and get some support as you go through because I think it's really important that you find that support and that you continue to succeed. All the best at school and following your dreams.

**Mr. Beardy:** Thank you.

**The Chair:** We'll move on to the Conservative Party and Ms. MacLeod.

**Ms. MacLeod:** Connery, that was a very good presentation. You brought such clarity when you spoke, and very few people have done that before us in the last two days. Yesterday I mentioned that one of my big regrets for this committee was that we did not travel up north, but you painted a very clear picture for us and you deserve a lot of credit for that.

I want to ask you a quick question. I know that Andrea talked a bit about a deputy advocate and having an advocate for native children. I want to ask you something. Do you think it would help if the advocate would be available or even communicated to at Pelican Falls First Nations High School, if there was a way there that you could talk to them at school?

**Mr. Beardy:** Yes. I think it would be really good if they had an advocate. They do have counsellors all the time. When I stayed there, I shared a place with 13 other boys in one home, and there was always someone there to go to. That's how I would like the advocate to be, just someone around to go to, always there.

**Ms. MacLeod:** And to have that connection to the provincial government and child welfare and the different services we offer?

**Mr. Beardy:** Yes.

**Ms. MacLeod:** I just want to thank you again. I think the next time you come to Queen's Park, you might actually be a member. So congratulations.

**The Chair:** On behalf of all of the committee and the members of provincial Parliament, thank you for coming down here today. Have a good day and a good trip back.

**Mr. Beardy:** Thank you.

**The Chair:** Before we move on to our next deputation, we're going to hand out—we heard earlier this morning from Stephanie Ma. She mentioned an online blog. She has written a little letter which draws committee members' attention to that blog site, which was created to get youth input. I'm just bringing that to committee's attention, at [www.wematterlistenup.blogspot.com](http://www.wematterlistenup.blogspot.com).

## SUDBURY ACTION CENTRE FOR YOUTH

**The Chair:** We'll move on to the next deputation, which is Sudbury Youth. We have Michelle and Emily. Good afternoon, and welcome to the justice policy committee.

**Michelle:** Good afternoon. My name is Michelle, and this is my co-presenter Emily. We're representing the Urban Aboriginal Youth Leading the Way, the Eshikigijig Youth Advisory Circle and the Sudbury Action Centre for Youth from Sudbury.

**Emily:** I'm just going to talk a little bit about what our different groups do. The Sudbury Action Centre for Youth does many various different things. They have a youth drop-in, which has a peer mentoring program. They do activities. They help youth with many different issues, from addictions to homelessness. They help youth with everything, basically. They have a point needle exchange. They have outreach. They have a casual labour pool where they have clients come in in the morning, meet employers and do jobs for the day. So they do a lot of different stuff. I volunteered with them for the past four years. We made a video of what we've learned, at a youth perspective, of drug misuse and abuse. We go into schools locally, in Barrie, all over Ontario, schools, colleges, universities, community centres and we present this to other youth one-on-one. So the Sudbury Action Centre for Youth does a lot of different various things.

**Michelle:** The Urban Aboriginal Youth Leading the Way—me and Emily are both members of that group. We started about two and a half years ago. We came together and we started off with a dialogue. It was a social inclusion project. They asked us for our input on what we would like to see with our school boards, with our police forces. So we held a dialogue in April 2005 and that went well, so from there we moved up and we kept going and going. We had another dialogue just recently to follow up on what kind of messages aboriginal youth had about the school boards, the police forces and the city. We've made two videos as a teaching aid to represent what the aboriginal youth were trying to say.

The Eshikigijig Youth Advisory Circle is a group of aboriginal youth who get together at the N'Swakamok Friendship Centre in Sudbury. Pretty much whatever the youth do in Sudbury, whatever the urban aboriginal youth do in Sudbury, it goes through us first. We come up with ideas, we plan out budgets and we pretty much design programs for kids to do.

I guess we're going to start off with Emily.

**Emily:** Our first one was who the advocate should serve. Children who receive help from the advocate now should also receive help with the new independent advocate. So the deaf, the blind, on probation, and in police custody should receive the same help that they have now. Those children should not lose their resources. The advocate should also have to work with all children and youth who are at high risk because it's likely that these youth will have some relations with or be in government care.

If the child and youth advocate does not respond to the needs of all children, then she should be obligated to refer children who contact her to the proper agencies and organizations which can help them with their problems.

**Michelle:** A second question that we came across was: How will children and youth be informed about this advocate? We thought that there needs to be a system in place to make sure children and youth in care know about the advocate and how to contact him or her. All parties involved with children in government care should be responsible and have to provide this information to children and youth. They should also have to give them access to a private phone call. There should also be some kind of penalty or consequence for parties who prevent the youth from speaking with the advocate or who do not provide them with that private phone call. Protocols detailing this will have to be created—protocols as to how to contact the advocate.

In order to have the children more aware, advertisements such as posters, websites and 1-800 toll-free numbers would probably make it easier to contact the advocate.

There should be a specific time limit in which the advocate can return a phone call and that they can actually see the child. This limit should be at least three to five working days for a phone call and one to three weeks before they can actually see the advocate. However, these time limits should be the maximum. Anything other than that would be unrealistic to the child. The child and youth advocate should attempt to contact children and youth as soon as possible. It should always be a priority for them to do.

1610

**Emily:** Our third section is, will one child and youth advocate be enough for an entire province? One person representing all children in government care is really unrealistic. There should be at least one northern Ontario advocate office to deal with the diverse needs of northern Ontario. As you know, northern Ontario is fairly different than southern Ontario, so at least one.

There should also be a separate advocate for First Nations children and youth in government care. There should be a separate office to represent First Nations. There is a high rate of First Nations children in government care. First Nations children are among the largest-growing population in the province. They require someone who is knowledgeable about their unique cultures and traditions and is able to communicate in their languages. This advocate should be properly trained and accustomed to the aboriginal traditions and lifestyles. To

go further in this, in a lot of northern communities like Kashechewan, Moosonee and that—my boyfriend's from up there—those children do not speak English. They learn Cree as their first language. A lot of the children do not learn English until they enter school. Some of them never learn English. Really, if you're going to have a child and youth advocate, they should be able to communicate in their language and know about the diverse needs and problems in their communities so that they can relate to those children.

**Michelle:** Another barrier we came across was, if the child and youth advocate is not allowed to properly investigate a complaint, how is he or she supposed to do their job effectively? In order for the child and youth advocate to be able to do his or her job effectively, he or she will need to have more investigatory powers. He or she should be able to enter youth care facilities and check first-hand what is actually happening. There should also be some directives included in this bill that allow the advocate to have authority. If they cannot enter certain buildings to see the youth, they cannot find out first-hand what is going on, because stories are often different than actions.

**Emily:** Our fifth section is, who will the child and youth advocate be accountable to? There should be a reasonable amount of time for the advocate to return phone calls or see children. There should be a process in place for children and youth to submit a complaint if there are concerns not addressed by the advocate within a reasonable amount of time. They should become part of the policies and procedures for all parties involved with children and youth in government care.

**Michelle:** Our sixth section, finally, is the youth input. There should be a process in place to get input and feedback from children and youth on all issues affecting them, such as development of new policies and bills at all stages. For example, youth forums from various cities in Ontario could be held, and the data gathered from these forums could be used by the government. The advocate could have a role in this, such as working with community centres, agencies, youth centres, and being the middleman between the people and the government—not just a one-directional job representing the children, but also representing them in their visions, views and what they see.

**Emily:** We would also like to speak about the process you used for this committee hearing. Youth were not included from the start. Instead, we were consulted at the end of the process, with very little time to prepare a response. Youth should be given more reasonable timelines to work with it. It's really great that we have this opportunity to speak here, but I only found out about this last Wednesday. I had a week to go to all our youth groups, get their input, put it together and arrange travel here. That was a very quick, unreasonable timeline. We should have been notified at least a month ago or something so—we're only three groups, here. We could have been—all of our schools, the Metis youth group—a lot better prepared.

We would like to thank you for this opportunity to speak to Bill 165. We'd be glad to answer any questions you have. Meegwetich and thank you.

**The Chair:** Thank you, Michelle and Emily. We'll spend about six or seven minutes with questions and we'll rotate around the table, starting with the Liberal Party. Mrs. Van Bommel, do you want to start?

**Mrs. Van Bommel:** Thank you very much. You said you had very little time to prepare, but you've done an excellent job. You've gone into the questions and the thoughts very carefully and in great depth.

You bring a number of different things again to the table that we haven't heard before, and one of the things that you talk about is the time limits for the call-backs. You can call the advocate but there has to be a time back. I think all of us understand that, because when you're in a crisis or something is worrying you, you want to hear back really quickly. So do you have kind of an idea of how much time you think is reasonable? When does it get to the point where it starts to be too long?

**Emily:** We said three to five days for a phone call back, to call a child back.

**Mrs. Van Bommel:** You're really reasonable.

**Emily:** And one to three weeks to actually see the child, but those should be maximums.

**Michelle:** Those should be maximums only.

**Emily:** It should be on an ASAP basis to contact the child back. However, if you're one advocate dealing with 25,000 youth in Ontario in government care, how much time are you going to have to call back all the youth? So that's why we say those should be the maximum. However, there should be more advocate offices and more advocates to respond.

**Mrs. Van Bommel:** So you're actually talking about a call back from the advocate himself or herself as opposed to somebody from their staff or their office.

**Emily:** Well, somebody representing them or the office. We got those timelines from—

**Michelle:** From our youth.

**Emily:** Also, I recently attended a workshop on Bill 210, which is now within the children's aid act, and their timelines were pretty similar to contact the band to notify them. However, usually those timelines are not used. It's usually right away. Those are just the maximum set timelines.

**Mrs. Van Bommel:** Thank you very much.

**The Chair:** Ms. Smith?

**Ms. Smith:** Just really briefly, I want to thank you for your involvement in your community and in Sudbury. Being from North Bay, we're practically neighbours, so thank you for coming down today and really turning your mind to this and bringing some important issues to our attention. We really appreciate it. You did a great job.

**The Chair:** We'll move on to the Conservative Party. I see both microphones are on.

**Ms. MacLeod:** Thank you very much, Emily and Michelle. Great job. Just like your predecessor here, you did a great job telling us what's going on in your community. On this side of the table, we're of the view

that youth should have been consulted before the last two days. We can't change that but we were just distributed something about a Blogspot. I'm going to read that into the record. I want you guys to take this down so you can send it out to your people that you think need to consult on this bill because we on this side, and I'm sure they on that side, will listen to this. It's [www.wematterlistenup.blogspot.com](http://www.wematterlistenup.blogspot.com). Send us some messages, because we're nowhere near the completion of this piece of legislation.

I just wanted to congratulate you on that and see if we can get messages out there. I'll tell you, you made a very important point, which is that children who are currently receiving the resources of the child advocate today should, after this bill is passed through this Legislature, receive the same resources and services. I think that's a very important point to make, and it came from youth. So I just want to congratulate both of you again. Thank you.

**The Chair:** We'll move on now to the New Democrats.

**Ms. Horwath:** Thank you very much. I get to ask you some questions too, Michelle and Emily.

**Interjection:** Sorry.

**Ms. Horwath:** That's okay. They won't be hard, I promise. But I've got to tell you, it really does blow me out of the water that you are so active in your community and I just have to say that's amazing. When you started listing the things that you're doing in the various groups that you're working with, plus your commitment to interconnect, and then you got to the part where you said you design programs for youth in your communities, that is absolutely fabulous. I just want to say you're doing such great work that it really does blow me out of the water and I think you need to be really proud of yourselves. I think we all here are very impressed with what you've been doing from the description you gave us.

I want to say also that I think it's really important that you raised the issue of tying penalties to non-compliance with the bill. I think that's missing and we really need to turn our minds to the fact that if we're serious about this bill working, if we're serious about the independent child advocate making sure that all of the things that we're asking that office to do can get done, then there needs to be something that tells people that we are serious. Part of that is kind of the other piece of the picture, which is, if you're not going to follow the law, if you're not going to give the advocate access, if you're not going to give young people the opportunity to call the advocate, then you're on the hook, then you're breaking the law, and so therefore there's a penalty. I think that's really important.

1620

I think it was interesting the way you illustrated it. I can't remember, I think it was Michelle who said—I think you were talking about the timelines and you said the stories are different from the action. The stories are different than the action, so that what you get told is happening or what the advocate or somebody in the adult world might be told is happening by the service provider

isn't what you're necessarily experiencing as the child in the facility. Is that what—

**Michelle:** Yes, because if they can't go to certain places to investigate what is actually happening, they can't see firsthand what is happening. All they hear is stories; they can't see the physical.

**Ms. Horwath:** Absolutely. That's extremely important. I'm glad you brought that to our attention.

The last thing that I wanted to say is that I think that you're raising the issue again and reinforcing what we've heard from First Nations community leaders and children about the need for an advocate in the north. An advocate who is culturally sensitive to First Nations' traditions and to First Nations' languages and First Nations communities is absolutely required. I hope the government will accept amendments in that regard when we go to the next stage. I want to thank you for reinforcing that again. It's extremely important. You do great work. Thanks for being here. We really appreciate it.

**The Chair:** Thank you for your presentation. It was very, very good.

**Michelle:** Can I get up now?

**Ms. Horwath:** Now you can go.

**The Chair:** Yes.

#### YOUTH POLICY ADVISORY AND ADVOCACY GROUP

**The Chair:** We'll move on then to our next deputation. It's the Youth Policy Advisory and Advocacy Group, Youth Communication and Advocacy Network and the Ontario Association of Children's Aid Societies. The representatives are Adam Diamond, Amanda Rose and Alyssa Bevan. I hope I've pronounced those names right. Hello. Good afternoon. Welcome to our committee. If you want to pass water on, I don't know if anyone else wants water.

**Ms. Amanda Rose:** It's a great pleasure for us to have you guys listen to us today. Not often do youths get a chance to be consulted and to use their voice on issues that concern them. My name is Amanda Rose and to the furthest is Adam Diamond, and this is Alyssa Bevan. We are from the Youth Communication and Advocacy Network, advocacy component, the Youth Policy Advisory and Advocacy Group. It's a very big name. It's under the OACAS, but we do our own work, which is fabulous. We have youth all across Ontario coming and discussing a lot of issues and policies, technically representing the 8,000 youth in care all across the province, which I believe is the only group that's doing it, youth in care in children's aid societies.

We do have seven points to present to you. I believe that Alyssa will go first.

**Ms. Alyssa Bevan:** Our first point is just about the identity of our status. We believe that we have a unique identity and that we should be separate from the criminal justice youth as well as the mental health youth because we have different living situations and different needs, and we're uniquely different than the others. So the

advocate would have to be aware of that. Bill 165 should identify the children and youth in the different groups and serve them on their own kind of purposes.

Aboriginal children, children and youth groups from mental health, and youth within the criminal justice system are a lot different than the youth who are in care; we all have different situations, we've all experienced different things and we all have different needs. A lot of different advocates are needed for these groups who have expertise in that situation. So we do need that.

We also would like to speak on our own behalf because there are always people within agencies or within large groups who try to speak on behalf of youth, and most of the time our voices aren't heard entirely because sometimes information gets transferred differently or our words are changed around. We really do need to be able to speak on our own, because we may say one thing but it can be changed to a completely different thing. We need to be able to present and speak for ourselves about our own issues in court, bill hearings, consultations with other stakeholders and things like that.

**Ms. Rose:** This next point I am personally attracted to. I think the advocate should have the age of service extended. Under legislation currently, I think they serve until the child is 18 years old, but currently there are children and youth in care beyond that age. We, as a youth policy advisory group, are trying to encourage that youth be served until they are emotionally, physically and developmentally ready to be on their own. The age they had said was around 24 years old, so I guess having the child and youth advocate serve children and youth in care until they are out of care, not just until they are 18, and have that guaranteed under legislation. I don't know any normal parents who kick their kid out at 18 and expect them to make it on their own without their own personal advocate.

Also, we found a lot of difficulties, particularly with this bill and other bills. The information itself was really difficult to understand, and access to the information was really difficult in some cases. Having access and making it understandable to youth would be very beneficial.

I remember that the London group yesterday had mentioned that posters on the walls everywhere in the schools and things like that would be very helpful. I think somebody had asked if the Internet would be very good. I'm not sure if it would be very good, because I don't know very many youth in care who have computers or who have access to a computer, unfortunately. So having access to the advocate available in places where they can phone and things like that would be better, not just the Internet.

Also, having the advocate available at all times: The previous group had said three to five days to get back, but I think the advocate should be there to receive the call; and have it around the clock, because I'm pretty sure that most crises don't happen between 9 and 5. They usually happen at the most unexpected time.

It's a very private call, too. Yesterday the London group had mentioned not having the worker or the person call for you on your behalf.

Also, making it more local: I remember when I was living in Lanark in a really small town up northeast, and I didn't think the advocate could do anything for me if I had an issue because they're so far away. If they're going to get back to me in a few days—I need somebody right away.

1630

**Mr. Adam Diamond:** Our sixth point is basically around the selection of the advocate. YPAAG feels that youth should be involved in a process that selects the advocate as well as being involved in a method that evaluates or reviews the advocate. We support amendments to Bill 165 that would require an appointment process whereby there is all-party support and, most importantly, like I said, youth input and confirmation for the selection. Basically, we feel this way because youth will feel empowered and that we're listened to and engaged. I think it gives credibility to the position of the advocate if its stakeholders are involved in selection.

Our last point is around documentation. I know that Bill 165 does not give the advocate full rights to access important documentation pertaining to the child or youth. So we feel that the advocate should have access to any type of documentation, reviews or information that it requires to act on behalf of or with the child or youth.

Some other areas that we discussed were around decision-making processes, involving youth within the advocate's office, that there's appropriate funding available to the advocate so they can carry out their mandate, a guarantee on response time—we didn't talk about specific response times, but I'm thinking off the top of my head, to have a callback from an advocate within 24 hours—and accountability for the advocate.

**Ms. Rose:** You've probably heard this many times before, but we've just said it again.

**Mr. Diamond:** I just want to go back to YPAAG. The Youth Policy Advisory and Advocacy Group was started last summer, and they've met quite a few times. They've had a retreat, and they've had a lot of meetings. They've basically focused on four main areas. This is coming out of a youth conference that OACAS held last summer. They came out with four recommendations around age of eligibility, emotional support, educational support and financial support.

This youth group works and they meet every two or three months on advocacy and policy advisory. We've been involved in consultations with one ministry specifically around educational opportunities for youth. But Bill 165 really meant a lot to this group. Alyssa is here with us, but there are 11 other members of the group. They're not here today, but they're in the picture on the front. We just wanted to say that we support the bill. Thanks.

**The Chair:** Thank you. We have about six minutes for questions. We'll begin with the Progressive Conservative Party. Ms. Elliott will ask the first question.

**Mrs. Elliott:** Thanks to all of you for your excellent presentation. You've made really great points, really stated them very clearly and very strongly. Your pres-

entation really underscores the need for youth to have been involved in this process all along, because the child advocate is not for any of the people around this table; it's going to be for you, and it's important that we hear from you about the things that are most important.

We have heard very clearly the point, particularly with respect to the extension of the services of the child advocate past age 18. That's a point that we've heard of. Until you brought it up—you just brought it forward so eloquently, and I thank you for that.

I'd also like to thank you for all the other access points that you've talked about, about making sure you have a variety of ways for youth to be able to connect with the child advocate, because not everyone has a computer in their home or foster home where they are; the distance aspect of it too, the fact that, particularly when it's going to be a hard call for you to make, you want to make sure that there's going to be somebody who's going to be available to help you as soon as possible; finally, the access to documents as well, for the child advocate to really be able to do her job.

I thank you very much, and congratulations. It was a wonderful presentation.

**The Chair:** We'll move on to the NDP.

**Ms. Horwath:** I just want to make sure I have your name right: Alyssa with an "A"? So you guys are the A-team, right—Amanda, Alyssa, Adam? That's good; I like that.

I don't want to probe, so if you don't want to answer, just say, "I don't want to answer." We've heard from young people about timelines, about access to the advocate, about some of these real, fundamental day-to-day issues, if this is all going to work for young people. Do any of you have any experiences where you have actually needed to or wanted to call an advocate and had the opportunity or desire to, but knew that you might not be able to or hesitated in doing so? Have you ever had the experience of wanting to phone an advocate and being told you couldn't? Have you ever been denied the opportunity, in your experience?

**Ms. Rose:** When I was 17 years old and living on my own, I hadn't seen my social worker in quite a long time. I just wanted to leave the children's aid society because I didn't think that the advocate would be able to help me out in that way. I wasn't sure of the advocate's role or if he or she would be able to come up and see me, because I was living five or six hours away. Fortunately, the children's aid society was very helpful in the case and they did get me a different worker and it was very successful. But if I had had that person to communicate with, that advocate who could actually come and talk to me, I think that would have been a lot more comfortable for me.

**Mr. Diamond:** Also, when I was 17, I was basically forced to move out on my own. I went from one foster home into a group home. I was there for about three months and then basically told that I needed to start looking for an apartment outside of the group home. I was very upset with that because I liked the stability of a

family. I was just told that that wasn't going to be possible. I was unaware of an advocate being available until last year, when I was 21. I wasn't even aware that there was an advocate, but at the time, it would have been somewhere to turn, just to talk to someone and learn about my rights, for sure.

**Ms. Horwath:** Have any of you ever asked for your own records, to look at any of your own records or your own information and had that denied? Is it a pretty open process?

**Ms. Rose:** When I've asked for records, they were given to me.

**Ms. Horwath:** The same, pretty much?

**Mr. Diamond:** The same.

**Ms. Horwath:** Okay. That's good. I wanted to say on the age thing, I'm really glad you raised it as well. During the process of Bill 210, I tried to bring amendments to the Child and Family Services Act. I tried to get amendments to the extended care agreement so that you could continue to get supports for a longer extent, beyond 21 to 24. That didn't pass, obviously, and I'm glad you're raising it again, because I think you're right that things are different now. It's not 18 anymore; it's 21 or 25 sometimes by the time young people really have the roots to start moving on. So I support that. Thank you for bringing it forward. You guys are great. Thanks.

**The Chair:** We move on to the Liberal Party. We'll start with Mrs. Van Bommel.

**Mrs. Van Bommel:** Thank you very much for your energies in coming here today. You were here yesterday as well, so you're listening and taking in quite a bit of what's been going on. I'm really not going to say too much more because we talked about the age issue. Certainly you're right; most of our children are not ready to leave home at 18. If they are, it's because they know they can always come back if they need to, right? They have that security. There's a real difference in having the security that you can go back. It makes you much more adventurous on that kind of front.

The question you ask in here—and it probably goes around everything that the advocate does. If we all kept this in mind when we dealt with children and youth, there would probably be a lot less need for an advocate, and that is, what would a good parent do? You're right; if we'd remind ourselves of that question, then there would be far less trouble. Thank you.

**The Chair:** Thank you for coming out today. It was a very good presentation. Thank you very much.

Our next presenters who are scheduled are the Cedarbrae Collegiate Institute Youth Group: I'm not sure if they're here yet. Why don't we hold that one down, then.

1640

#### NISHNAWBE ASKI NATION DECADE YOUTH COUNCIL

**The Chair:** We'll try the Nishnawbe Aski Nation Decade Youth Council. I hope I pronounced that

properly. Welcome to the committee. If we could ask for your names, just for the record.

**Ms. Serene Spence:** I'm Serene Spence. I hold the social and communications chair on the NAN Decade Youth Council.

**Ms. Ester McKay:** My name is Ester McKay and I hold the urban chair for the Nishnawbe Aski Nation Decade Youth Council.

**Mr. Duane Moonias:** My name is Duane Moonias. I hold the political and justice portfolio of the NAN Decade Youth Council.

**The Chair:** Thank you all for coming here. As the rules are, you have 15 minutes to make your presentation, and if there's any time left after the presentation, we'll ask you some questions.

**Mr. Moonias:** I'll do a brief introduction of the NAN Decade Youth Council.

The Nishnawbe Aski Nation encompasses 49 communities, covering the land mass of two thirds of Ontario. The NAN Decade Youth Council was established in 2002 at the Changing the World in a Decade Youth Leadership Symposium in Thunder Bay, Ontario. Since its inception, the Decade Youth Council has restructured to now be a 10-member council, with each council member being between the ages of 18 to 29 and each being responsible for one or more portfolios.

The Decade Youth Council has the objectives of providing NAN youth living in their communities and living in urban areas with an opportunity of obtaining leadership skills and to promote youth empowerment. We also act as an advocating body on behalf of NAN youth at the regional, national and international levels. We recognize that belief in our culture and preservation of our heritage gives us strength and dignity. We work to preserve and protect each other's individual First Nation heritage and stress strong family values.

The history of aboriginals in Canada:

Archaeological evidence confirms that First Nations and Inuit peoples have lived on the land now known as Canada for thousands of years as culturally diverse, sustainable communities. There are 133 First Nation communities within Ontario. These originated and are part of 14 distinct nations of people, each with their own languages, customs and territories.

A CAS report indicates that in 2005 some 2,600 aboriginal youth were in child care. This is approximately one quarter of the population of children serviced by children's aid societies. The number does not include Inuit, non-status and Metis children and youth. It demonstrates high levels of aboriginal children and youth in the system. This number is three times the number of children that were in residential schools at the height of their operation.

**Ms. Spence:** I'll be giving the First Nation perspective on Bill 165.

A First Nation advocate needs to be created due to the high population of youth in the system. The framework of the advocacy office should also incorporate more of a cultural framework. Also, First Nations child care organ-

izations have specific aboriginal components. Aboriginal children are not able to reach their full potential regarding their culture and traditions while in care. Further, the advocate should help children access these services by providing information and also assisting with connecting them to these resources.

A First Nations advocate would better understand the issues of these children in regard to aboriginal and treaty rights in order to advocate on behalf of these children. It's imperative that children in care are able to receive proper medical services, regardless of their situation.

Although these medical reports are unconfirmed, First Nations in NAN have noted this issue. At the very least, it is an important issue that perhaps a youth advocate could look into, especially a First Nations-specific advocate.

Lack of cultural sensitivity and awareness when it comes to supporting the families who are in the child services process—for example, we could go as far back as the 1960s scoop, or the residential school epidemic, where many children were taken from their homes and placed into non-aboriginal homes, unaware of their community and culture.

Many factors contributed to the high rates of aboriginal children in care. It was a time of concern and distress. Media reports had given Canadians new reasons to be disturbed about the facts of life in many aboriginal communities: high rates of poverty, ill health, family breakdown and suicide. Children and youth were most at risk.

The primary reason why First Nations children come to the attention of the child welfare system is neglect. When researchers unpack the definition of neglect, poverty and substance misuse and poor housing are the key factors contributing to the over-representation of First Nations children amongst substantiated child welfare cases.

**Ms. McKay:** I will be discussing the reasons why there should be an advocacy office in northwestern Ontario.

If there were an office in northwestern Ontario, it would better promote the services in this area.

It would be easier for First Nations communities to access this office. One of the reasons why we think this would be a good idea is because, as very involved youth workers out in our community, we did not know about this resource, this advocacy office, until last year, and I didn't know until just last week—so how are youth in northern Ontario supposed to know that this resource exists?

As well, if there were an advocacy office in northwestern Ontario, it would need to have a prominent partnership with aboriginal organizations. The reason for this is because a lot of aboriginals up north speak their own native language, and this language barrier would cause more obstacles for the youth to access such a resource.

We are concerned that there are youth in the system who feel threatened or intimidated and who are unable to communicate because they speak their native language,

so a First Nations advocate should assist these youth by ensuring that language barriers are taken into account. For example, every community and urban setting should have access to programs where the children and youth have an interpreter to provide assistance for the foster parent.

There should also be more than one advocate. There are currently 25,000 children and youth in custody and in care; one office and one advocate is not enough. For our youth to feel like they can get help regarding their needs and rights, the advocacy office needs to reach out more to youth. Bill 165 should include an extension of the advocacy office, specifically to be based physically in northern Ontario.

There should be more promotional opportunities for the First Nations advocate.

There are unconfirmed reports that First Nations youth in care of protective services are being denied basic medical services, a right of all First Nations people in Canada, and we're just asking why this is happening.

Create a culturally appropriate poster to create more awareness, with a toll-free number being clearly visible; we just believe that this would help with the promotion of the advocacy office.

**Ms. Spence:** The mandate of the advocacy office needs to include assisting youth in the justice system. More support is needed for victims of criminal activity. This should be considered part of the mandate of the advocacy office. There needs to be specific assistance for children and youth who are victims of crime. We are unaware at this time if this is a service provided by the victim/witness program of the Attorney General, and this is why we make this suggestion.

#### 1650

The advocacy office needs to work with children and youth in ensuring that proper investigations are done in the area of sex crimes and abuse.

More options need to be available for youth in care; for example, sharing experiences with fellow youth. The advocacy office should include this as part of their mandate: Connect youth in care and youth in custody with the opportunity to share their experiences with their peers, through facilitating more opportunities in group homes and youth groups.

Also, more direction and consultation is needed from front-line workers, correctional workers and children in care and children in the justice system. We urge you to seek more consultation with these groups, as these are the people who will be directly affected by this legislation.

**Ms. McKay:** We also believe that children who are not in government care should have the right to access such a resource. Some kids may not know how to access their basic needs and rights due to poverty and location. Who helps them? If the advocacy office can, it should.

There should be more prevention programs rather than just a focus on rehabilitation programs. Let the youth know that you don't have to be a youth in distress to get some attention or help.

It should be mandatory for agencies to give advocacy office contact information to children and youth in care, not just information about rights. If that was in place, we believe that it would be more useful for the youth and it would just make things a whole lot easier.

The bill should be more descriptive and detailed about how often the advocacy office would be able to visit children in facilities. A specific protocol should be in place. Bill 165 does not explain how this would happen.

There should be follow-ups for the complaints being put forth by the youth to reassure them that action is being taken, because it is a difficult task to challenge authority, especially when you are a youth under the government's care.

**Ms. Spence:** That completes our presentation.

**The Chair:** Thank you very much. We have about five or six minutes. We will go around the table, starting with the NDP and Andrea Horwath.

**Ms. Horwath:** I want to thank you all for coming this afternoon and sharing your perspectives with us, particularly because the issues you raise are so important. First Nations youth have been ignored for too long. We can't have yet another piece of legislation that talks about youth but not about First Nations youth. So I want to congratulate you for giving an excellent presentation. It was very thorough.

One of the issues that was raised in your talk was the need to make it mandatory that information be available and that young people have access to the advocate. One of the things that's missing from the bill is any kind of penalty system. For example, we can make it mandatory, but if there isn't any kind of fine or anything that says, "If you don't do something, there are consequences"—do you think we need to build in that kind of a system with this bill?

**Ms McKay:** Yes.

**Ms. Horwath:** You raised the feedback loop, and I think that's really important so that you know that after you've made your call and you've talked to the advocate, it's not just somewhere out there; that there's an obligation to let you know what has happened since your call and what you can expect to happen as a result. I think that's extremely important, and I don't think that has been raised yet today, so I really appreciate you bringing that to the table.

The issue particularly around aboriginal and treaty rights, the cultural and language issues that need to be looked at and built into an advocate in the northwest—I agree with you 100%, and I look forward to trying to get the government to change where they're going now and make that happen.

The last thing: You talked about maybe having a poster with a 1-800 number. What are your ideas on where to post posters?

**Ms. Spence:** We were thinking about schools, even drop-in centres.

**Ms. McKay:** Places where kids are located.

**Ms. Horwath:** So organizations like your own that you work with, the NAN organizations, will be able to

help that actually come to life. If we can get a northern child advocate from First Nations, then you would be able to engage with that person and make sure that posting happens in the right places. That's great.

**The Chair:** We'll move on to the Liberal Party.

**Mrs. Van Bommel:** Thank you very much for your presentation. Thank you for coming to Toronto to do it. You talked about things like language barriers. As I hear more and more of these presentations, I'm starting to get a sense that the advocate or some member of the advocate's staff should be more localized. Where do you go right now? Do you have someone you work with as a youth council, an advocate within your own communities? Do you have anybody now who speaks your language and so on?

**Ms. McKay:** It's more grassroots. We know someone who knows someone who can speak on behalf of the people who speak the native language. NAN does have a resource where they can access elders who do speak the language.

**The Chair:** We'll move on to the Conservative Party.

**Mrs. Elliott:** I'd also like to thank you for your excellent presentation, because you've brought to the forefront the issues affecting youth, First Nations youth more particularly, and the issues around needing to have someone who can speak languages that are appropriate, have cultural sensitivity and so on, all really important points. But I think the one that really resonated for me the most—and it's sort of a wake-up call, I guess—is we really have been looking at this from our own perspective. When you talked about how we need to safeguard youth who feel very vulnerable and how difficult it is to come forward and how you're really counting on the child advocate to advance your cause, you're helping us to see it through the eyes of youth and to think about it in that way. That's a completely different perspective than we've looked at it before. I really thank you for that because now we can go through and, with that perspective in mind, we can look through and make sure all of the necessary safeguards are going to be there so that we're looking at it from the perspective of somebody who is a little bit afraid, anxious, worried about how this is all going to work out. Thank you very much for that. It's really very helpful.

**The Chair:** On behalf of the committee, I want to thank you for coming out today and for making a very good presentation. Have a good evening.

#### CEDARBRAE COLLEGIATE INSTITUTE YOUTH GROUP

**The Chair:** The earlier deputation, the Cedarbrae Collegiate Institute Youth Group, is now here, so I'd like to welcome Bor, Mathora and Olivia.

**Kwesi:** Hello, good afternoon. I'd just like to apologize for our tardiness. We got off at the wrong stop. I'm just here to provide support for the three students.

**The Chair:** Thank you. To the students, good afternoon and welcome to the committee. You have 15 minutes to speak to us. If you don't use up all your time,

then we may ask you some questions. Thanks again for coming out.

**Olivia:** Today we're basically here to address different topics that were placed in the bill that we feel need to be addressed. Some of them include what advocates should do, how they should be elected, and also how we feel about minority groups such as children who are deaf and blind, whether or not they should be incorporated under the advocacy.

**Bor:** I'm coming from a more general perspective on your bill. I'm just here to speak on the pros and cons of the bill, what is significant and what impact it's going to have on youth, because whatever comes out is going to be for us and whatever consequences come, we will have to bear the consequences. So I'm just here to speak from a more general perspective and to give my ideas and opinions.

1700

**Mathora:** Hi. I'm Mathora and I guess I'll start it off. I'm speaking on behalf of the part of the bill that is in regard to the children who have not been included, who are the deaf and blind, the children with disabilities and children who are on probation or police custody. In my opinion, I believe that they should be involved because there are many people who have accomplished many things in life being blind or deaf or having been disabled in any way, especially people who have been in jail or have been in police custody or on probation. Just because they had a bad past doesn't mean that they can't change the future and make their lives better for them.

**Bor:** I would like to continue from where she stopped. I think it is necessary that everyone has the opportunity to progress and to have these wonderful privileges so as to improve life and to have happiness and progress, especially in relation to youth and especially to us today. We see it's necessary that many of these facts and considerations that you have come out with are necessary for us. For example, when she was speaking about the deaf and blind, it is very important that every human being has such rights and privileges. There should not be any kind of discrimination or hindrances to individuals with respect to the physical, mental, emotional or any kind of problems that they have in life.

Also, I would like to attack the question where you asked, should these children and youth be included, and should all children and youth? I think everyone should be included generally because we are all equal. We might not be equal in life in terms of status, in terms of education, in terms of physically or emotionally, but we all have the same rights and we all have everything that it takes to be a human being.

**Olivia:** I would like to address how children and youth and the advocate will know that there is someone looking out for them. I believe that when they are brought into government control, they will be introduced to a representative when they are first and foremost and that representative should explain to the youth or child what advocacy does and how they can be contacted. That should be made mandatory, that as soon as you're brought under government control, you are told that.

How will kids be able to reach the advocate? The youth will be able to contact the advocate by mail, phone and e-mail. To prolong that, you can also suggest that if you're going to do it by mail, you supply each service or agency with a certain amount of postage stamps so that if children would like to write to you or send you coloured pictures or something, they have the ability to do so.

The advocate should produce public reports. How will they be able to be involved in this process? As I said before, they would be able to draw and colour pictures. You can collect that and it would go into a portfolio and it would be kept private and confidential. It should not be shown to the caregivers, and the selected crafts and works can be included in the reports. During these activities, I would like to suggest that there is an advocate or a representative there so that there are no barriers going on. The child doesn't feel afraid; they know that it can be open and honest.

**Bor:** I think that's a very good point she just came up with because for most youth, especially my friends at school and those I know, most children have many problems. Personally, there is a friend I have who is living at home with his parents but he's being abused. There are many ways he tries to come out, but because of the control of the parents and that kind of authority, he is very afraid. He seems not to find a way to come up with solutions and ways to help because he thinks there are consequences for his actions. When he comes up with anything he needs a backup. Many kids in our school or in society have problems. It's just the few who have the courage and the confidence who come up boldly to report these problems.

I think in this Bill 165 we should find ways and means to make sure youth are confident enough to come out. They should have at the back of their mind that whatever consequences come after would be for their good and they would be positive. For me personally, I was abused several times, and I didn't have the confidence to come out and report the matter, because I knew that by the time I did, I would be doomed; I would be in big trouble. But then it took me many years, it took friends, it took the knowledge that was necessary for me to have to know where to go and how to go about it so that whatever consequences came, it did not affect me in any manner for the negative, but for the good.

So I think your committee should take into consideration how the youth of our society should be able to have access to your facilities and your resources so as not to hinder some—to make sure that it is in a way that everyone can come out boldly and nobly, without any fear or doubt.

**Olivia:** The advocate should help to protect young people and improve their lives. So what are the things the advocate could do to protect us or the children in those situations?

The advocate should be able to act on the youths' behalf; for example, withdraw them from a particular place if they are being abused, whether it's emotionally, sexually or physically. The advocate should include the

opinions of the young people, as you are doing right now. The advocate should be elected by majority vote. All groups should be represented equally in the panel. The panel should include the major political parties; senior students and reps from youth and children's services in Canada, who should evaluate her to see if she's doing a good job; clients the advocate oversees; members of the department that he or she manages—that is, assuming that the child advocate is given the resources that will ensure that this role is effectively carried out—and lastly, the election panel or the board to which the advocate reports.

How should the advocate work with young people so that her opinions reflect what we think? The advocate should work with a team of trained undercover youth officers who are strategically placed in facilities to share in the experiences of youth, observe, and gather data. It is important that all decisions are made democratically so that the youth involved feel valued. That is very important.

How will she help young people to speak out directly to what we think? Create structured group discussions in the institutions and in facilities. These discussions can be led by a trained youth or someone in the same age group. This will help them to feel more comfortable and be more open and honest.

What responsibilities should caregivers and service providers like foster parents, social workers and others have to help young people to contact or see the advocate? It should be the caregiver's responsibility to ensure that the youths have the needed information, such as contact numbers and names, at their request. I firmly believe that this should be mandatory. In fact, these should be placed on the walls of these institutions and given in little pamphlets. The youth and children should also have the right to a private phone call without disturbances and eavesdropping, similar to when you are arrested. However, they could have mandatory limits for the time spent on the phone. For example, youths should be allowed a minimum of five minutes for advocacy calls, once requested.

What should happen to any adult who tries to prevent a young person from speaking with an advocate? Any adult who tries to prevent a young person from speaking with an advocate should be reprimanded, warned or removed from the job. If their reason is valid, this should be proven to the advocate without any contradictions—and that is none whatsoever.

How long should a child have to wait before he or she calls you back or before you can see the advocate? There should be categories of complaints, varying from sexual harassment to teasing. Depending on where the child's complaint falls and the urgency that it needs to be addressed with, that will determine when the child will be spoken to or seen. I strongly suggest that an overall time limit be placed on responses, calls, letters and/or e-mails.

What kind of powers does the advocate need to do her job? The type of power the advocate needs should allow them to be able to make immediate, urgent decisions

without going through a chain of command, providing that the reason is logistic. The advocate should also have more investigatory powers to ensure that the child's or youth's best interest is not at risk of being deterred. Without valid information, the report would not be as accurate as it could have been if the advocate had the right to more investigative powers. If the situation needs more detailed documents, the advocate should be allowed to have a legal representative to demand the viewing of the required documents. Lastly, the advocate should not be denied the opportunity to speak with or see a child or youth in any given facility or organization.

**Bor:** I think that's it for now. You may ask us questions.

1710

**The Chair:** That was a very impressive, articulate presentation. We have about four or five minutes for questions. This time we'll start with the Liberal Party, either Mrs. Van Bommel or Ms. Smith.

**Mrs. Van Bommel:** Thank you very much for your presentation. It certainly was very in-depth.

My first question is just going to be—I'm not from Toronto—where is Cedarbrae Collegiate Institute?

**Bor:** In Scarborough. It's just at Lawrence and Markham.

**Mrs. Van Bommel:** Thank you. When you said you got off at the wrong stop, that's something I would do, and so I was kind of curious where you were coming from.

You brought up the election of the advocate. You talk about a panel that would do that, which would include government parties, but you also talk about students being included and children being included in that selection. Would there be a number of people who could be candidates for that role, or do you see one person being presented and then the panel making a decision as to whether they are suitable or not? How would you bring it to that point?

**Olivia:** Basically, the idea that came about was that you would have, for example, two representatives from each political party and two main persons from children's services Canada, and, for example, if we have youth who are a part of organizations that speak on behalf of others, such as RISE or East Metro Youth Services, then you could take the leaders from that group, one or two, and they would be on the panel. Then they could elect among themselves someone to be an advocate.

**Mrs. Van Bommel:** Thank you.

**The Chair:** We'll move on to the Conservative Party. Mrs. Elliott?

**Mrs. Elliott:** Thank you for your wonderful presentation. The thing that came through to me, as it has with several of the presentations this afternoon, from what you're saying is that the issue of access is so important: access for youth, to be able to, first of all, know that they have rights that can be protected by the child advocate, and then access to that person, to be able to be in touch with that office and know what number to call and how to be in touch with them, but also, similarly, access by

the child advocate back to youth. They need to be able to have a free flow of information so that you know that when you've raised an issue, the child advocate will be there in order to help you, and they need to have unimpeded access, both to youth personally and to their records and all the information about them, so that they can resolve issues.

So thank you for bringing that forward very directly to us.

**The Chair:** For the NDP, Ms. Horwath.

**Ms. Horwath:** I too want to congratulate you on a very well researched, well-thought-out and articulate presentation. You did a great job.

I have a couple of questions, just quick ones, picking up from what Ms. Elliott was saying about access to the advocate. In a couple of other presentations, young people were talking about time frames; for example, once you make a call, you expect a return call by a certain time, and there was a bit of back-and-forth about how long you should have to wait after you've made a call to the advocate before you get the callback, assuming that when you call, you are leaving a message or you are expecting a return call.

Did you talk about that at all in your discussion about this bill? Any suggestions or thoughts?

**Bor:** Yes. She spoke about it clearly in her presentation. If I remember, when she spoke, she gave a minimum time limit of five minutes.

**Ms. Horwath:** No, no. I heard that part, that when you call the advocate you have a minimum of five minutes at least to speak to them while they are on the phone. Maybe I was not being clear. I'm talking about, if you make the phone call, how long should you have to wait before—let's say you make the phone call and there's nobody there to answer your call, so you've left a message: "I'm so-and-so. I'm calling from here. I really need to speak to an advocate. Can you either call back or send somebody?" From that time, how long? Should there be a maximum amount of time that you should have to wait before you get a response back from the advocate's office?

**Olivia:** As I said earlier, it depends on the urgency. If it's a case where the person said, "I'm being abused, and it's sexually," then that should hit top of the line. So whoever gets that callback, that should be the main priority, to call that person back and find out what's happening. If it's a case where the person calls and says, "I'm from here. I'm Sarah Doe. I don't like where I'm living," and so and so—if it's not that important, then you can put that in a period gap of between 48 to 62 hours to get a response. But the main idea is that the advocate is supposed to be there to protect their rights, to look out for them, for children in government control. It doesn't make sense if you have government control and five days later no one is responding to them. So there should be a three-day limit to calls that are not as urgent as the previous ones or others.

**Ms. Horwath:** I appreciate that, because I think the important thing to keep in mind is, if we're going to have

a successful independent child advocate office that's going to be able to meet the spectrum of needs that you talk about, then we have to make sure that that office has adequate resources from the government to do its job effectively for young people and with young people. That's why I was asking a little bit more about that, because I think you've identified very clearly that there is a spectrum. In the hospital, when you get triaged, right?—the same kind of thing. I really appreciate your thoughts around that.

**Bor:** Just to highlight her point, she spoke of importance and urgency. Some youth, some people calling your office or your advocacy might not be able to be detailed on the phone. So I think your responses should be immediate, irrespective of how urgent the matter is. Some people might just report a complaint without any details, and you might not know what's actually going on. I think, from my perspective, your response should be immediate and there shouldn't be any limitations as to how and in what manner you should respond. It should be immediate to every youth. So far as a call is made, it should be responded to.

**Ms. Horwath:** I appreciate that. Thank you very much.

**The Chair:** Thanks for coming out. Both Mr. Balkissoon and myself represent ridings in Scarborough, and you've made Scarborough very proud today with your presentation. So keep up the good work. Thank you very much. Class dismissed.

## REGIONAL MULTICULTURAL YOUTH COUNCIL

**The Chair:** The next group is the Regional Multicultural Youth Council: Amanda, Valentina and Alicia. The process here is just basically that we'll hear from you for up to 15 minutes. If you finish before that time, then we may have some questions for you. We're right on time. We've got some flexibility, but we're trying to stick to that time limit. If you would just identify yourselves, your first name.

**Amanda:** My name is Amanda, and I'm from Thunder Bay.

**Alicia:** My name is Alicia, and I'm from Eagle Lake First Nation.

**Valentina:** My name is Valentina, and I'm from North Spirit Lake.

**The Chair:** Welcome.

**Amanda:** We're here on behalf of the Regional Multicultural Youth Council. The youth centre is a network linking all youth in small isolated communities across Ontario. I'm 19 years old, originally from Longlac First Nation. My community is located on Highway 11 outside of the town of Longlac. I'm the oldest out of my brother and sister, and all three of us have been in care for most of our lives.

We are very pleased to be invited to take part in these hearings. It makes us feel important that we are being asked to share our ideas and express our opinions. Someone said that the most precious resource is our children,

and I really think that's true. We are glad that our political leaders are taking time to consult with youth about a position that will have a big influence on the future lives of so many young people.

We welcome the establishment of the independent child advocate to work with and for youth in care. This voice should be free from government interference.

1720

When I was younger, I addressed many situations to my workers about the foster families I was living with, from verbal abuse to physical abuse. To this day, I still haven't gotten any feedback from them to say what I should have done about the situations.

From my experience, I feel that the office of the chief advocate should be able to respond to any issues raised by kids, regardless of how small the problem may seem. The office should have powers to investigate complaints and given a set time to respond. If the workload increases, resources should be given accordingly to make sure that all kids feel they are being listened to.

We like the toll-free number for accessibility, and brochures, pamphlets and anything else to publicize kids' help lines. However, more could be done to engage schools, youth centres, church groups, recreational centres and more to reach all kids and raise awareness of the help, resources and supports that are available to them. Obviously, this will mean more work for the chief advocate, but addressing their concerns early is a preventive strategy, and this should be considered as an investment in the well-being of the next generation.

Therefore, we feel that the independent chief advocate should have the capacity to review programs for youth in care, monitor their effectiveness and recommend best practices that will make a difference. Otherwise, the number of youth in care will continue to increase when issues are not addressed, and kids become bitter parents. If all they know are negative experiences, their kids will continue the cycle.

The chief advocate should also be able to work with youths and consult with them on a regular basis on their needs, interests and concerns, and solicit input to improve services and programs. Involving youths in the decision-making process makes them stakeholders. This will give them a sense of ownership of what is going on and encourage them to be accountable for their destiny.

**Alicia:** Good afternoon. My name is Alicia and I'm from Eagle Lake First Nation outside of Dryden. I am 17 and have been in care since I was a year old. I've lived in Eagle Lake, Kenora and many other foster homes. I recently moved to Thunder Bay.

I'm very grateful for being given a chance to contribute to the discussion about the creation of an independent child advocate. From my experience in care, I feel that it is very important to have someone to turn to when problems arise. I also feel that kids who are voiceless need to be heard and their concerns should not be influenced by politics. Therefore, an advocate who is independent of government interference will be able to give a more objective opinion to address problems and improve the system.

Having lived in Eagle Lake and Dryden, we're far away from the government in Toronto. We are in a different time zone, and this adds to the feeling of isolation. Our communities are small and seem powerless compared to the many people who live in southern Ontario. Sometimes we feel that our issues are overlooked due to political pressure from the more populated regions.

I would like to recommend that the advocate office should have regional deputies to ensure that we all have an equal voice. I believe that this will be better for our children and youth in small remote communities. Thank you.

**Valentina:** My name is Valentina. I am 17 years old. I come from North Spirit Lake First Nation, which is a fly-in reserve located north of Red Lake. It is a small community with just under 400 people. I have been in care since I was 10 years old. Fortunately, my foster home is with my grandparents.

We are here to support the creation of an independent child advocate that is arm's length from the government. This will help to ensure some objectivity when dealing with matters that may be politically sensitive. I have been talking to many students at Dennis Franklin Cromarty First Nations high school, and we are aware of growing numbers of aboriginal children and youth in care. A majority are a living legacy of residential schools, and this trend will continue unless there is intervention to break the cycle.

We feel that the office of the chief advocate should be sensitive to the challenges faced by aboriginal children and youth experiencing the intergenerational impacts of residential schools. With parents with no parenting skills who are failing as positive role models, mental health problems, addictions, poverty and disease are rampant.

There is an overwhelming sense of hopelessness. It is no wonder that many aboriginal youths are committing suicide at a rate that is higher than the national average.

Our situation is unique since we are indigenous to this land.

Unfortunately, the numbers of aboriginal youth in care will continue to increase when kids at risk become parents and all they know and have been exposed to are the negative lifestyles of their parents.

Therefore, we feel that an independent child advocate should have the capacity to review programs for youth in care, monitor their effectiveness and recommend best practices that will make a difference.

The child advocate should also be able to work with youth and consult with them on a regular basis. Involving youths in the decision-making process and giving them a sense of ownership in shaping their destiny will help to advance their cause, status and well-being.

**The Chair:** Thank you very much. We have about six minutes, so there will be two minutes per party. We started last time with the NDP, so we'll start this time with the Liberal Party.

**Mrs. Van Bommel:** Thank you very much for coming and doing this presentation. I'm sure it's quite a trip from Thunder Bay.

Tell me a little bit about the Regional Multicultural Youth Council. What kinds of things do you do? How many of you are involved? Do you have an adult counsellor?

**Amanda:** I've been volunteering for the youth centre since maybe grade 9, when I was 13 years old, so for about six or seven years.

We do all kinds of things. We have dances and all kinds of things to get youth out of trouble and keep them off the streets and give them a place to go. There's a youth centre with computers, food and coffee and stuff like that. It's basically a place where kids feel safe.

There is an adult there, and he has been running it for quite a few years.

**Mrs. Van Bommel:** How many young people would use the centre?

**Amanda:** There are a lot; I don't even know how many. I know that when I used to go to the dances when I was in grade 9, there were always at least 60 or 70 kids every Friday.

**Mrs. Van Bommel:** So everybody likes to go there?

**Amanda:** Yes.

**The Chair:** I will move on to the Conservative Party and Mrs. Elliott.

**Mrs. Elliott:** Thank you so much for being here. I just want to tell you how much I admire you. You're courageous, self-assured and wonderful group of people.

You've told us today how much it would help you in the things that you're doing, in all the positive things that you're trying to do to bring hope and best practices and be real role models in your communities, and we want to do whatever we can do to support you in your efforts by strengthening and modifying this act with the child advocate so that we can make it be all it should be for you in your efforts.

**The Chair:** Next is the NDP and Ms. Horwath.

**Ms. Horwath:** I, too, want to thank you all for the presentation. It was very good.

I want to say that I appreciate the way that you listed your ideas of where we could provide information about the existence of the independent child advocate; I think that was very helpful. You talked about your centre and schools and churches and community places, and I think that's really important information.

You also talked a little bit about engaging young people and how important it is to actually engage young people and improve the system. Based on what I'm hearing from you, I think that a piece of this bill that we need to build in is not just having the advocate working on behalf of individual kids, but also finding out where the system needs to change to make things better for the future.

Do you think that the advocate should be doing that work, by engaging young people in a discussion about what needs to change? Do you think that a part of the job of the advocate, moving forward, should be to engage the youth voices in identifying where the problems are and how to fix them?

**Alicia:** Yes, I think that would help a great deal

**Ms. Horwath:** So people like yourselves, the work that you do in the community, you would be the natural people, then, the advocate—for example, if we can get an advocate for First Nations kids in the northwest, people like you would be the very people the advocate could then go to to talk about how to make things better for your brothers and sisters and your kids and your community.

**Amanda:** Our peers, yes.

**Ms. Horwath:** That's great. Thank you very much.

**The Chair:** Thank you for your very, very thorough presentation. It was very enlightening.

1730

## TOWN YOUTH PARTICIPATION STRATEGIES

**The Chair:** We'll move on to our next deputation, TYPS, Les Voakes.

**Mr. Les Voakes:** Good afternoon. My name is Les Voakes and I am the executive director of TYPS, Town Youth Participation Strategies.

A short introduction of who and what we are: We're a registered non-profit charitable organization and we work with many of the same youth you just met. The Thunder Bay youth centre is actually a member of TYPS. We work with youth centres across Ontario. We represent particularly the ones in smaller communities and small towns, but we have representation everywhere, including the Big Smoke, here in Toronto. But our emphasis has always been in the smaller communities and small, rural towns and northern areas.

Bill 165 was brought to our attention as it was evolving and we felt that it was a very important piece of legislation to comment on as it was moving along. It was very fortuitous that we were able to bring it forward to our conference, which was just a few weeks ago, and have quite a number of young people address points about the legislation and discuss it. Many of our youth members who go to the youth centres are in care, have been in care or may very well possibly be in care down the road.

They're youth centres. They're very much, as was explained by the people just in front of us, drop-in places. They're places for young people to go and meet with each other as well as have friendly faces and adults who are there to give advice and referrals and assistance.

First, just briefly, I think Bill 165, from the conclusion of the youth who were at the meeting, is a very important step and a very much needed and is literally a benchmark piece of legislation to provide an advocate. It was seen as very important, particularly for the youth who had been in care in the past and who fully appreciated the potential. They also recognize very much that this is new and groundbreaking for Ontario, so, again, they welcomed it very much.

They did, of course, have many suggestions and thoughts on the matter. My apologies; it is very rare that I show up without at least two or three of the youth. We have a youth board that goes with me pretty much everywhere, but this was a bit of a challenge of short notice

and distances to get here. But I was entrusted and you're stuck with me.

Briefly, one of the main things that came out almost immediately was that, as important as this is for youth in care, their immediate reaction was, "What about all youth in Ontario?" All youth in Ontario could use an advocate. There is a real benefit to that in many ways. To quote one specific line from one of the youth, "A system created out of need or to cover crisis only does not always work. It is easier to react but it doesn't always give a voice to those youth that need it and it becomes a part of the system, something that's like, 'We're here to fix your behaviour,' rather than 'We're here to help you.'"

I think that summed it up very nicely. They wanted it to be an organization or a person who they know; whether you're in an institution or in care or not, that is the telephone number to call, that is the person to try to reach.

There are other points that I'll try to go through fairly quickly and systematically. That way, it's easier for you to ask questions.

It was felt that Bill 165 currently, the way it was written, was very restrictive to the advocate in the potential for being able to investigate matters. The youth recognized particularly, right away, the limitations of not being able to open files in all institutional organizations and see what was going on. Those who had actually been in an open custody situation or through probation systems etc. knew very well that what it says in those files is often very important to whatever their points might be, and they wanted those available and accessible.

They also felt that there was no reason why the advocate shouldn't have access to any file or organization or institution that is funded by the province of Ontario. If it is the advocate's ability to look into matters, why not?

Having no mechanism of guaranteeing reasonable access by children and youth was of great concern. The act says they must be informed about it but it's kind of vague on how, when and what happens to someone if they don't. Those are the sort of questions that came up. They felt that the legislation should be strengthened in that way, to actually have it ingrained. Some of the discussions that I had with some them were that occasionally those are things that get put in later on in policy and procedures rather than in legislation, but they felt very strongly that it was something they wanted very clearly, with teeth, not something that's a nice little policy somewhere that might be ignored occasionally.

Bill 165 does not include the role for the advocate to prevent circumstances that might be harmful, detrimental and conflictual. It seems to be much more of a reactionary role only. They felt, as one quote says, that there is a role there to look into things before they get out of hand, before the person is in care, and maybe even prevent them from becoming in care. Again, they understood there are limitations to law and legal systems, as such, but they felt there is a role there.

One of the interesting things that came out from one youth was, why not have any new piece of legislation, no matter what level of government—whether it's muni-

icipal, provincial or federal—be vetted through this person, to take a look at it and see, how could that affect youth? How would that affect youth going into care or maybe prevent them from having to go into care? Is it a child-friendly or youth-friendly piece of legislation or act? We thought that the child advocate would be a very unique role for that and their office.

I said this, they said that, so I'm not going to repeat it. They're interested in the broader issue of in care.

The advocate's role does not include reporting on findings and the making of recommendations beyond a reactionary piece to what they are called upon. This again is the idea of, why not do more consultation? I think you heard that from the previous delegation too. The advocate could have a role, whether it's in the legislation or it's something that's written in as an addition. Especially in rural communities and smaller communities across Ontario, there are a lot of non-institutional organizations, like youth centres, Boys and Girls Clubs, Big Brothers and Big Sisters, that are often serving an advocate-type role for the youth in their community and also have first-hand knowledge of what the issues are from the perspective of that community. They seem to be—I can tell you, from our partners and our members—very willing partners if they simply are asked and given a piece of time for that.

Another concern was, who is this advocate? Where are they coming from? Who gets to say who gets to be the advocate? Depending upon where you are from and your perspective, that's very important. If you're from the north, we should have an aboriginal face to that advocate or, at the very least, somebody who is from the north and understands it. It is a very different world there. So is it in small communities and farm communities that are sometimes not very far from big cities but are a very different world and have different issues, particularly regarding access to services. This has great impact from an advocate's or a youth's point of view, particularly in care, because it has a cascading effect on whether or not follow-up can be done regarding aftercare from a program.

For example, if a young person is in an open custody and part of the open custody's program is home visits, being part of a substance abuse program and that sort of thing, it's probably very difficult to manage some of those things, and you could find yourself in breach of conditions very quickly in a small community, where the closest place you can access those programs is maybe a two-hour drive, with no transportation to and from. So again, this is a big issue of having somebody who actually understands those issues: that transportation is not jumping on a TTC bus or a subway and getting somewhere quickly.

1740

The other suggestion is in terms of who the person is. The youth would like to have a voice in that. They feel that, in the selection of the individual, they have some wisdom and something to say about who is the advocate. There are many youth who immediately volunteered to help in the selection committee if you're interested. They

would also be willing to serve as an ongoing advisory committee, and I think you've heard that before. The TYPS conference had 200-some-odd youth, and I probably would suggest that about two thirds of them at least had some voice in these comments. So, you would have a lot of volunteers very quickly.

I'm trying to wrap up as quickly as I can. Sorry, I've lost my place.

The other issue, and I have to say that this is probably mine more than the youth, because they really believed—they're interested and very concerned that whatever the legislation says the advocate can do, that they will do. They want to know that that's going to get done, and in what way responses will be given. I use the words "time frames" and "timelines." I think that is very critical to have in there. There's a lot of legislation that is very clear on that. Sometimes that is put into policies and procedures. I'm quite familiar with ones, particularly regarding open custody. I used to manage open custodies, where there are policies, but they're not law. Law is important, especially in response to a young person: a week seems like a year to a young person in many regards, especially if they're in a crisis or feeling that they're being dealt with unjustly. Time is of the essence. Some timelines, I think, are pretty reasonable to suggest getting back to people and getting responses back, within reason.

I ran through them fairly quickly because I thought that was the best way, and I also knew that you were hearing from a few delegations that I thought—with the youth—would be able to say it better than myself.

**The Chair:** Thank you, Mr. Voakes. You've pretty well used up the time.

#### NETWORK GROUP, PAPE ADOLESCENT RESOURCE CENTRE

**The Chair:** We're going to move on to our last deputation of the afternoon. It's the Network Group, Pape Adolescent Resource Centre: Victoria, Julaine and Sashan. I hope I said the names right.

**Victoria:** Hello. Thank you for your time. My name is Victoria, and this is Julaine, and this is Sashan, and we are members of the Network Group.

I am 18 years old. I am currently attending CDI College, and I'm taking travel and tourism.

I have been in Catholic children's aid since I was five, so it has been around 13 years, and I have never heard about or used the advocacy office until this bill was presented to us in the Network Group this year. I have been through a lot and I wish that my social worker or my foster parents would have told me sooner about this kind of agency.

We are here as representatives of the Network Group, which is a part of the Pape Adolescent Resource Centre, also known as PARC. PARC is a joint project of the Children's Aid Society of Toronto and the Catholic Children's Aid Society. It has been core-funded by the Ministry of Community and Social Services since 1985 and receives additional funds from other government and private sources. It is a great preparation for independence

for young people with child welfare experience between the ages of 15 to 24.

With your permission, we would like to use some of our time to ask you a question at the end of our presentation.

Julaine will now present.

**Julaine:** Hi. My name is Julaine. I'm 17 years old and I'm a youth in care. I'm in grade 12 and attending Cardinal Newman Catholic high school.

For the last two years I've been a member of the PARC community. When I first came to PARC, I was just a participant, learning many of the skills that I needed to survive and to improve myself. I've learned to improve my socialization skills and my leadership skills.

As a youth in care and living in a foster home, I don't get opportunities to hear about the different programs and agencies that can really help young people develop and improve themselves.

PARC is a great organization, and I hope that all youth in care get a chance to become a part of our community.

Although my life is going pretty well and I'm graduating from high school in June and have been accepted into a program at Centennial College in September, a few months ago my life was in turmoil. In a childish and stupid moment I did something wrong that will have a major effect on my future choices in life.

I lived in a foster home with a great foster mother and other foster kids. One night I was roughhousing with my foster sisters, the situation got out of hand and at the end of the night I was charged with assault. Thinking back, I don't know how this happened and I will regret this event for the rest of my life.

If I'd known about the advocacy office at the time, it would have been nice to have their support and assistance.

Most times it's very hard for youth to communicate their needs and issues, especially to authority figures. Having a youth advocate would have been a nice thing to have.

Sashan will speak now.

**Sashan:** Good evening. My name is Sashan. I'm 16 years old and a member of the Network Group. I attend Mother Teresa Catholic Secondary School and I am in grade 11.

I have been in care for a year and a half and have been a part of the PARC community for about a year now. Currently, I'm living in a foster home. This is my second foster home since I have been in the care system. I feel that my experience in the CCAS care has been a living nightmare. I was taken out of one situation for my protection, but I don't feel protected—anything but.

My foster mother and my CCAS worker don't understand me. I feel lonely and alienated. I am not claiming to be the best kid ever, but I think that I deserve to be listened to and that my problems and issues are just as important as any adult's.

When you are a youth in care, you feel powerless. First, you have no one to speak on your behalf, and

second, you're young; therefore, you are easily dismissed.

Living with a foster family is very difficult. My foster home is a fake family ideal. My basic needs are being covered, yes, but no one cares about my soul or my emotional needs.

The treatment of my foster family's biological children is so very different from the way they treat us foster kids. When they take their family for summer vacations and Christmas holidays, us foster kids have to find somewhere else to go.

My issues may not be large or important to others. I hear a lot that if my basic needs, such as food and clothing, are covered, then why am I complaining? I guess what I'm trying to say is that even though my belly is full, my soul is crying out and no one is listening.

A simple thing like hair care becomes a big issue for the care system. Black kids have been in the care system since before I was born, yet when I say to my worker, "I need extra money to make sure my hair's healthy," she doesn't seem to understand what I am talking about.

Canada, and especially Toronto, is supposed to be a very multicultural place to live. However, when I ask for something culturally specific, I have to beg and degrade myself to get any attention, and most times the answer to my question is, "We don't provide that."

The advocacy office should help youth advocate for our rights, but they should also help us advocate for our other needs in our lives.

The Network Group has five recommendations for the advocacy office to better help youth in care.

(1) The office should not be problem-focused but effective-service-focused.

(2) Youth in care need advocates for our lives, not only to advocate for our rights.

(3) It is the advocacy office's duty and responsibility to let youth in care know about their agency; for example, use new technology to advertise, i.e., billboards, radio ads, Internet and TV.

(4) Respond to youth issues in less than 24 hours: We think their mission statement should be, "Youth issues are immediate. Therefore, we should provide immediate response."

(5) Mystery advocate: Advocates should have the power to visit foster homes and group homes without informing even the youth workers, the youth's worker, foster home or group home.

1750

**Victoria:** Now we would like to ask you a question. We want to know, what is the most valuable piece of information you have learned in this hearing?

**The Chair:** We'll start from the right and work our way around the table. The way it works is that—is that the end of your presentation?

**Victoria:** Yes.

**The Chair:** Okay, that's great. We've got about eight minutes left, so we'll go through the three different parties and they can ask questions or comment or maybe even answer your question. We'll start first with the Progressive Conservative Party.

**Mrs. Elliott:** I think I would say the most important thing I've learned is the need to have youth involved in the whole process. That covers every aspect of this particular bill and the role to be played by the child advocate. We've seen it from a variety of perspectives, particularly from all of the youth organizations that we've heard from this afternoon. To me, how important the whole idea of accessing communication is and how youth need to be able to know there's somebody out there fighting the good fight for them and being there for them when they really need help—that's a perspective that we can only get from you. So I thank all of you who are here today, and I think that's an invaluable piece of information or advice that we've heard from all of you. Thank you.

**The Chair:** We'll go then to Ms. Horwath for the NDP.

**Ms. Horwath:** Thank you very much. I really like the way you turned the tables at the end of the last presentation. Now we have to answer the questions.

If I've learned one thing in the course of these two days it's how much, although I hear statistics about youth, particularly youth in care and First Nations youth and racialized communities and we talk about things like cultural sensitivity and those kinds of issues, we talk about it at a theory level. There are statistics. But what I've learned and what I value so much from what you've brought in your discussion is what's really happening in your lives and how the systems that we talk about and that we're trying to fix have affected you. That's something of value that I have to say thank you for to you, all three of you, and then to every other young person who has shared with us. I think that that's the most important part of your being here. So I think I've learned how much information, how much insight, just how much you have to offer in making this bill—and hopefully other ones in the future that have to do with young people—work for you. So I want to thank you for that.

But I did have one question for you. We talked a lot through the last two days about the requirements of letting kids know about the advocate's existence and making sure that they're told. Every single one of you has said you didn't even know that there was an advocate when you needed an advocate the most, probably; you didn't even know that there was one. I don't think that's unusual. I think, absolutely unfortunately, that's the reality and that's what we have to fix. Right? If the independent office of the child advocate is not known to the very people who need it the most, then we have failed. One of the things that came up was, are there things that we can do to sanction or to—some people talked about fines, maybe, fines for not letting children know that there's an advocate available and giving them access to the advocate. I'm not sure who it was who mentioned, and I think it might have been Victoria, the fact that your social worker didn't even tell you that there is an advocate. Was it you who said that? Your social worker didn't even tell you.

**Victoria:** Yes.

**Ms. Horwath:** I started to think if there isn't some other—so as we talk about awareness through posterings and through the Internet and TV and all those other things, do you think there needs to be some obligation to the social work profession in making sure that they know of the independent child advocate and they are required to let you know when they work with you in the community and in the homes and different things? What do you think of that? Does that make sense?

**Julaine:** That is actually a great idea. Some people—like my foster mom when I moved in, she's like, "Oh, the number is on the board if you need it." Right? She didn't explain what it was to me. So it's there, but they don't give you a lot of information about it. I think when you get placed in care, the social worker should tell you who they are and what they can do for you. I think that would be a great idea. I think that would be a wonderful idea, for the social worker to know about it and to let us know about it. They will say, "Yes, it's there, the number is right here," but they won't tell you what it is for. So you're like, okay, that's the number that I can—it's just there.

**Ms. Horwath:** So they should have more of an obligation as part of their profession to inform you and make sure you have access to the advocate.

**Julaine:** Yes.

**Ms. Horwath:** That's really great. By the way, I went to a high school named Cardinal Newman as well. It was in Hamilton. Thank you very much. You're wonderful women.

**The Chair:** We'll finally move to the Liberal Party.

**Ms. Smith:** Sure, I'll go first. I want to thank you for coming. I think the one thing that I learned was that no matter where you are, you need more information. We certainly heard that from our First Nations groups, the youth who came from the far north, and then right downtown Toronto, and from everybody in between. It doesn't really matter where you are, but you need more information about what's available to you, and, as you said, a little explanation about what you're being told it is. I really appreciated your presentation.

I wanted to know a couple of things. I lived on Carlaw, right near Pape, for a number of years. So I just wondered where the Pape Adolescent Resource Centre is and also, how you came to find it, because you're coming from three different places. Is it Akisha?

**Sashan:** Sashan.

**Ms. Smith:** Sashan, sorry. You talked about feeling isolated and very set apart in your new foster family. I just wonder how you found your way to PARC and how that came about and how we can get more people involved in organizations like this.

**Sashan:** I actually found my way to PARC by my fellow presenter, Julaine. I was actually told about PARC by my social worker, but I wasn't given as much insight about it. As well, I was not told anything about the advocacy office.

**Julaine:** PARC is located at Pape and Withrow. I know about PARC through my foster mom, my first foster mom. She told me that they are having a summer

program that they run every summer and you go and they teach you independent skills, socialization skills, how to make a resumé, how to find a job, do an interview with you and stuff like that. And then after that, they have night groups from Monday to Thursday. On Monday you have the relationship, on Tuesday you have art, on Wednesday you have the network and on Thursday you have the men's group, and you choose which one you want to go to—except for the men's group if you're a lady. You choose which one you want to go to, and you go to the after-school program and you basically join up from then. That's how I knew about it, and I've stuck to it ever since I've been in care.

**Ms. Smith:** That's great. I'm glad the program is there for you, and I'm glad you've been able to spread the word.

**Julaine:** Thank you.

**Ms. Smith:** Thanks a lot for coming today.

**Mrs. Van Bommel:** I want to say thank you very much for coming in. In terms of answering your question, I've learned a lot. I had to think about it for a bit, just to kind of say what was one identifiable thing.

As government, we do a lot of things. We have a commissioner for the environment, we have an Auditor General. We make a lot of appointments; we try to set up a lot of people to help the communities. But I think what I really learned, especially from the young people who have come before us in the last two days, is how really important the youth advocate is and the job that that's going to be, because of all the uniqueness. All of you have put a different face on this in some way or another. This is a very important role. It sets your life course for all of you as you go through.

As a parent and a grandparent, I know the influence adults can have on where children go. I know from my own community—it's a very rural community, and someone talked about the rural aspects and the issues of transportation in just getting to a centre. We've seen aboriginal people, we've seen people from the inner city. Everybody is different, and the advocate is such an important role. I wonder how we're going to address this properly so we can do this in a way that we can give everybody what they need. That's what really worries me, I guess, coming out of this, is that this is one role that is so critical to the future of all our children in Ontario.

**The Chair:** Thank you very much, and I want to thank you for coming here. I can say that I've learned how good the youth are at making their presentations—really good presentations that actually scare me because they're so good. Thank you for coming.

This committee stands adjourned. We finished at 6 p.m., on time, Mr. Zimmer.

**Mr. Zimmer:** Thank you.

**The Chair:** We're adjourned until Thursday at 9 a.m.

**Victoria:** Once again, we'd like to thank you for your time, and on behalf of the Network Group, we would also like to invite the committee to visit the network program one night. We meet every Wednesday from 5:30 to 8, and dinner is served around 5 to 5:30.

**Ms. Horwath:** Thank you.

*The committee adjourned at 1802.*







*Continued from overleaf*

Regional Multicultural Youth Council.....	JP-1219
Amanda, Alicia, Valentina	
Town Youth Participation Strategies.....	JP-1221
Mr. Les Voakes	
Network Group, Pape Adolescent Resource Centre.....	JP-1223
Victoria, Julaine, Sashan	

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Ms. Margaret Drent and Mr. Avrum Fenson, research officers,  
Research and Information Services

# CONTENTS

Thursday 26 April 2007

<b>Provincial Advocate for Children and Youth Act, 2007, Bill 165, Mrs. Chambers /</b>	
<b>Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes,</b>	
projet de loi 165, <i>M<sup>me</sup> Chambers</i> .....	JP-1181
Poplar Road Junior Public School Children's Advisory Group .....	JP-1181
Danielle, Miranda, Zachary, Shawn, Matthew, Jessie, Kezia, Kristen, Jack, Jordan, Michael (1), Emily (1), Kaitlin, Jaya, Sydney, Michael (2), John, Abbey, Joelle, Jaimie, Peter, Emily (2), Rhiannon, Ashley, Cody, Jackson, Elaine, Deneisha	
Mr. Paul Dagenais .....	JP-1183
Voices for Children .....	JP-1185
Ms. Cathy Vine	
Ms. Stephanie Ma	
Mr. David Witzel .....	JP-1188
Interministerial Provincial Advisory Committee .....	JP-1190
Mr. Jamie Emerson	
Ms. Cheryl Milne	
Ms. Sarah-Jane Dagg .....	JP-1192
Mr. Samuel Fragomeni .....	JP-1193
Mr. Jeffery Wilson .....	JP-1195
Tikinagan Child and Family Services .....	JP-1197
Mr. Harvey Kakegamic	
Chief Donny Morris	
Sioux Lookout First Nations Health Authority .....	JP-1199
Mr. James Morris	
Ontario Association of Children's Aid Societies .....	JP-1201
Mr. Dennis Nolan	
Ms. Jeanette Lewis	
Defence for Children International-Canada .....	JP-1203
Ms. Agnes Samler	
Mr. Matthew Geigen-Miller	
Mr. Connery Beardy .....	JP-1206
Sudbury Action Centre for Youth; Urban Aboriginal Youth	
Leading the Way; Eshikigijig Youth Advisory Circle; .....	JP-1209
Michelle, Emily	
Youth Policy Advisory and Advocacy Group .....	JP-1212
Ms. Amanda Rose	
Ms. Alyssa Bevan	
Mr. Adam Diamond	
Nishnawbe Aski Nation Decade Youth Council .....	JP-1214
Ms. Serene Spence	
Ms. Ester McKay	
Mr. Duane Moonias	
Cedarbrae Collegiate Institute Youth Group .....	JP-1216
Kwesi, Olivia, Bor, Mathora,	

*Continued overleaf*



JP-42

JP-42

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**Legislative Assembly  
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Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
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Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**  
Thursday 3 May 2007

**Journal  
des débats  
(Hansard)**  
Jeudi 3 mai 2007

**Standing committee on  
justice policy**

**Comité permanent  
de la justice**

Provincial Advocate for  
Children and Youth Act, 2007

Loi de 2007 sur l'intervenant  
provincial en faveur des enfants  
et des jeunes

Chair: Lorenzo Berardinetti  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 3 May 2007

Jeudi 3 mai 2007

*The committee met at 0905 in room 228.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Lorenzo Berardinetti):** Good morning and welcome to the standing committee on justice policy. I'm going to call the meeting to order. Before we start the clause-by-clause, we have a subcommittee report regarding Bill 198. I would ask for someone to read the report into the record and move its adoption, please.

**Mr. Bas Balkissoon (Scarborough—Rouge River):** I will do the honour. Your subcommittee considered on Monday, April 30, 2007, the method of proceeding on Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002, and to repeal the Water Transfer Control Act, and recommends the following, pursuant to the time allocation order of the House dated Tuesday, April 24, 2007:

(1) That the committee meet for the purpose of public hearings on Bill 198 in Toronto in the mornings and afternoons of May 9 and 10, 2007;

(2) That the deadline for those who wish to make an oral presentation on Bill 198 be 5 p.m. on Friday, May 4, 2007;

(3) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will distribute lists of those requesting to appear to the subcommittee members who will each provide the clerk with prioritized lists of those to schedule by 12 noon on Monday, May 7, 2007;

(4) That organizations and individuals appearing before the committee be given 10 minutes each in which to make their presentation;

(5) That an advertisement be placed for one day in the Toronto Star and also be placed on the Ont.Parl channel, the Legislative Assembly website and in a press release;

(6) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location;

(7) That the committee meet for clause-by-clause consideration of Bill 198 on Wednesday, May 16, 2007;

(8) That the amendments be received by the clerk by 12 noon on Monday, May 14, 2007;

(9) That the deadline for written submissions be the end of public hearings;

(10) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill;

(11) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable;

(12) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair;

(13) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Is there any debate?

**Ms. Andrea Horwath (Hamilton East):** I just want to say that I'm not on the subcommittee for my party. I don't know if this is exactly what was said. I just want to put that on the record. I'm not going to vote against it, because I really don't know, but I wasn't aware that we were going to be dealing with the subcommittee report, so I don't have any knowledge of what happened at that committee meeting.

**The Chair:** Any further debate?

I'll now put the question. All those in favour? Opposed? The motion carries.

PROVINCIAL ADVOCATE FOR  
CHILDREN AND YOUTH ACT, 2007  
LOI DE 2007 SUR L'INTERVENANT  
PROVINCIAL EN FAVEUR DES ENFANTS  
ET DES JEUNES

Consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth / Projet de loi 165, Loi visant à créer la charge d'intervenant provincial en faveur des enfants et des jeunes et à y pourvoir.

**The Chair:** We'll now start clause-by-clause on Bill 165. Members should have before them a package of motions that have been received in the office of the clerk. Are there any additional motions, comments or questions that members would like to table now? None.

The first motion is by the NDP. Ms. Horwath, could you please move your motion..

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Principles and purpose

"0.1(1) The following principles apply in this act:

"1. The purpose of advocacy for children and youth is to,

"i. ameliorate the vulnerability of children and youth who seek and receive services in the child and youth service and justice systems,

"ii. address the imbalance of power between children and youth and the organizations and persons that make decisions about their care,

"iii. acknowledge that children in the care of the state and institutions, young persons in the youth justice system, and children with complex special needs require effective advocacy to protect their rights, promote their views and preferences, ensure the quality of services that they receive and to help prevent their abuse,

"iv. further acknowledge that children with complex needs and Aboriginal children have special needs and require the coordination of multiple service providers, service sectors and ministries,

"v. recognize that children and youth require assistance to express their views and preferences in the context of the institutions providing service to them, and provide such assistance,

"vi. ensure that information about the rights of children and young persons is made available to children, young persons and their parents and caregivers;

"vii. promote the special rights and freedoms of children and youth including those in the Ontario Human Rights Code, Canadian Charter of Rights and Freedoms, and the United Nations Convention on the Rights of the Child;

"viii. promote the full participation and inclusion of children and youth in society.

"2. Advocacy for children and youth emphasizes,

"i. the essential human dignity and autonomy of children and youth,

"ii. the role of family as the primary source of nurturance and support for children and youth, to the extent possible, the participation of family in advocacy for children and youth,

"iii. equality for all children and youth and respect for diversity;

"iv. the least adversarial approach to finding solutions for children, youth and their families,

"v. the supportive role of natural advocates in the delivery of advocacy services.

"Principles

"(2) Without limiting the generality of subsection (1), the following principles apply in this act:

"1. Children, youth and families who are members of First Nations are entitled to receive advocacy services in a manner consistent with their distinctive culture.

"2. Children, youth and families in remote communities face unique barriers when seeking or receiving services in the child and youth service and justice systems.

"3. Children and youth who, by virtue of their special needs, pose an extraordinary challenge to ministries, agencies and service providers have a distinct need for advocacy services.

"4. The participation of affected children and youth in the work of the advocate enhances the credibility and effectiveness of the advocate."

Did I get through it without any mistakes?

0910

**The Chair:** Perfect.

**Ms. Horwath:** Close. Very briefly, I know that both the Conservative critic and the government have amendments as well to cover off what we heard loud and clear during the hearings, which was that the bill was absent of any kind of statement of principles, preamble or context, and that everyone who made presentations in that regard thought that was not doing justice to this important piece of legislation for children and youth. This is our attempt to pull in most of what we heard in the hearings. I would suggest that it's the most comprehensive of the three motions, and I would ask that the government members consider supporting it. I hope that my colleague the other critic would support it as well.

**The Chair:** Thank you, Ms. Horwath.

*Interruption.*

**The Chair:** It's not my BlackBerry; it's someone's.

Is there any further debate on this motion?

**Mr. David Zimmer (Willowdale):** The government is not able to support this. We've got government motions 3 and 7, which cover the same territory. Our motions cover off the statement of principles and the matters raised by the NDP motion.

**Ms. Lisa MacLeod (Nepean-Carleton):** Just quickly, we were urged throughout the hearings to be more encompassing and not restrictive, so I will be supporting this motion.

**The Chair:** I will now put the question.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That amendment does not carry.

We'll move on to the second motion, which is a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

"Principles and purpose

"0.1(1) The following principles apply in this act:

"1. The purpose of advocacy for children and youth is to,

"i. ameliorate the vulnerability of children and youth who seek and receive services in the child and youth service systems,

"ii. address the imbalance of power between children and youth and the organizations and persons that make decisions about their care,

“iii. promote the rights of children and youth including those set out by the United Nations Convention on the Rights of the Child,

“iv. promote the full participation and inclusion of children and youth in society.

“Principles

“(2) Without limiting the generality of subsection (1), the following principles apply in this act:

“1. Children, youth and families who are members of First Nations are entitled to receive advocacy services in a manner consistent with their distinctive culture.

“2. Children, youth and families in remote communities face unique barriers when seeking or receiving services in the child and youth service and justice systems.

“3. Children and youth who, by virtue of their special needs, pose an extraordinary challenge to ministries, agencies and service providers have a distinct need for advocacy services.

“4. The participation of affected children and youth in the work of the advocate enhances the credibility and effectiveness of the advocate.”

Mr. Speaker, I recommend this. It was endorsed by—

**The Chair:** I’m not the Speaker yet; I’m just a Chair.

**Ms. MacLeod:** Sorry, Mr. Chair. The Conservative Party put this motion forward at the urging of the Canadian Foundation for Children, Youth and the Law. Bill 165 seeks to empower youth through the advocacy powers of the provincial advocate, and we think a preamble would encompass the overall aims of this legislation and acknowledge the special voice of children and youth in our province. I would urge my colleagues to support this resolution.

**The Chair:** Any further debate?

**Ms. Horwath:** I’m going to support this motion. Although the government does have a couple of amendments in, they are not as comprehensive as either the motion the government members just defeated or the motion that’s before us now. So I’ll be supporting this.

**Mr. Zimmer:** Government motions 3 and 7, which I referred to earlier, are a statement of purpose and principles which cover off the ground that the Conservative motion does.

**The Chair:** I’ll now put the question.

**Interjection:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to the third motion, which is a government motion.

**Mr. Zimmer:** You have the motion before you. I have an amendment to that motion, if I can do that first.

**The Chair:** An amendment to the motion here?

**Mr. Zimmer:** Yes.

**The Chair:** Okay.

**Mr. Zimmer:** I’ll read it out. We propose to further amend the text of government motion number 3 by amending clause (c) of the purpose statement to read: “educate children, youth and their caregivers regarding the rights of children and youth.”

The rationale here is that it’s a plain-language purpose statement. It’s going to help the readers, particularly children and youth, understand the role and work of the advocate and expresses the unique interests of First Nations children and those with special needs. We’ve developed this statement in consultation with the current advocate and groups of children she works with.

**The Chair:** Could I just ask you to read the motion with the addition?

**Mr. Zimmer:** I move that the bill be amended by adding the following section:

“Purpose

“0.1 The purpose of this act is to provide for the Provincial Advocate for Children and Youth as an independent officer of the Legislature to,

“(a) provide an independent voice for children and youth, including First Nations children and youth and children with special needs, by partnering with them to bring issues forward;

“(b) encourage communication and understanding between children and families and those who provide them with services; and

“(c) educate children and youth regarding their rights.”

**The Chair:** I’m sorry, but you made the change to (c). It reads differently now.

**Mr. Balkissoon:** You have to read the amendment to (c).

**The Chair:** You had an amendment to it. Could you just read (c) with the amendment.

**Mr. Zimmer:** The proposed amendment to (c) is “educate children, youth and their caregivers regarding the rights of children and youth.”

**The Chair:** Okay. Any discussion?

**Mr. Zimmer:** I’ve made my point.

**Ms. Horwath:** Just briefly, although this amendment is not as comprehensive as the one the New Democrats put forward nor the one the Conservatives put forward, I like the amendment to your motion, and although I’m not convinced that it covers all the bases, I will be supporting it.

**Ms. MacLeod:** I’d like to echo the comments of my colleague from the third party. I think it doesn’t encompass exactly what we were looking for, but it’s a start. At this point in the game, we’re going to support the government.

0920

**The Chair:** Thank you. Any further debate at all? None? Shall the motion carry? All those in favour? Opposed? Carried.

Let’s move on to number 4. It’s a PC motion.

**Ms. MacLeod:** I move that the definition of “advocacy” in subsection 1(1) of the bill be amended by striking out “or providing legal advice or legal representation.”

This was recommended by the Psychiatric Patient Advocate Office. They feel that limiting the scope of the advocate’s practice to non-legal advocacy may erode his or her effectiveness and the ability to make systemic changes. There may be times when it would be appropriate to pursue legal advocacy, such as a standing at a coroner’s inquest or intervention in cases that have the potential to impact children’s services by setting legal precedents.

Finally, the current definition of “advocacy” should not become a barrier or an obstacle for the advocate to work on behalf of these children.

**Ms. Horwath:** I realize that there was some discussion during committee about this particular issue. Unfortunately, I’m not going to be able to support the amendment. On the balance of issues, our current advocate convinced me that the issue around having the legal responsibilities was not something that she wanted or that she saw as being appropriate for her office. So I won’t be able to support it, unfortunately.

**Mr. Zimmer:** The government will not be able to support the Conservative motion here. I agree with the comments of the NDP critic on this matter.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

MacLeod.

#### Nays

Balkissoon, Horwath, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on then to number 5. It’s an NDP motion.

**Ms. Horwath:** I move that the definition of “youth” in subsection 1(1) of the bill be amended by adding “and includes, in the discretion of the advocate, a person over the age of 18 years who is receiving services from an agency referred to in section 13” at the end.

**The Chair:** Any discussion?

**Ms. Horwath:** The issue had come up that there are a number of youth who receive services and who are on extended care agreements. I think it’s appropriate that as long as they are still receiving supports from the crown, they should be in a position of having access to the advocate. I don’t think it hurts us to hear the voices of youth. Sometimes it may be that young people, as they mature, begin to gain the confidence of raising issues with the advocate that they may have not been able to raise when they were younger. I’m just encouraging us to consider the fact that young people who are still receiv-

ing services and who are on extended care agreements are actually able to access the advocate services.

**Ms. MacLeod:** I have a similar motion that we’ll be debating after this one, which essentially says the same thing and, I think, for the same reasons. We heard from children here who are still crown wards over the age of 18, who we still have to be protecting as a government and as a Legislature. I fully support the NDP motion.

**Mr. Zimmer:** This government is unable to support this amendment. The proposed definition of “youth” is inconsistent with the definition of “youth” in the Child and Family Services Act and the Ministry of Correctional Services Act. The new legislation must be consistent with and not affect provisions in other Ontario legislation. Extending services to those beyond 18 years of age would go beyond the scope of the advocate’s current mandate.

**Ms. Horwath:** Could I just ask legislative counsel, is it the case that we cannot add that at the discretion of the advocate within the context of this legislation, that we can’t change that to allow her to provide services to children over 18 because it doesn’t occur in other pieces of legislation?

**Ms. Sibylle Filion:** I think you’re asking me whether it would be beyond the scope of the bill to include that kind of definition. Is that the nature of your question?

**Ms. Horwath:** Yes. Is it the case that by including this definition, that somehow negatively affects or impacts other legislation by putting this—

**Mr. Zimmer:** Chair—

**Ms. Horwath:** I’m asking legislative counsel through the Chair.

**The Chair:** She’s just asking a question of counsel, and then if you want, you can answer.

**Ms. Filion:** I can’t speak really to other legislation. In terms of this legislation, whether it would be appropriate to bring a motion that might impact upon other legislation, you can do so; however, you can’t directly amend that other legislation. Is that an answer to your question?

**Ms. Horwath:** Well, I’m a little bit concerned because I’m hearing from the government that the reason they won’t consider this is because somehow it’s going to negatively impact other legislation that has the definition of “youth” which doesn’t include children over the age of 18. Our intent here is to say specific to this child and youth advocate that they can receive services if they are beyond the age of 18 and they’re still receiving services of the crown as crown wards. I’m a little bit frustrated because I want to do the right thing, and I thought the right thing was to include those young people. I certainly didn’t see bringing this motion forward—I wasn’t told it was out of order in terms of being inappropriate and inconsistent with other pieces of legislation.

**Ms. Filion:** I just need to clarify that. My role here is to point out what might be in order and out of order. What might be appropriate from a policy perspective from the government’s point of view is within their ambit.

**Ms. Horwath:** Thank you.

**The Chair:** Mr. Zimmer, did you want to make further comments?

**Mr. Zimmer:** No.

**The Chair:** Further debate? Then I'll put the question.

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to page 6, a PC motion.

**Ms. MacLeod:** I move that the definition of "youth" in subsection 1(1) of the bill be amended by adding "and includes, in the discretion of the advocate, 18 years of age or over who is receiving services under relevant legislation" at the end.

This obviously has been recommended by several people who appeared before us, including the Canadian Foundation for Children, Youth and the Law. The aim of the legislation is to focus on the rights of children, yet there should remain, at the discretion of the provincial advocate, the ability to advocate for children and youth for those who receive services beyond their 18th birthday, especially during the crucial transition to independence or to the receipt of adult services.

My wording is slightly different from the third party's wording and I think actually deals with the government's concern. Therefore, I look forward to their support.

**Mr. Zimmer:** This PC motion is in effect the same as the previous NDP motion. I made my comments on the record, and I repeat those comments.

**The Chair:** Thank you.

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 7, a government motion.

**Mr. Zimmer:** I move that section 1 of the bill be amended by adding the following subsection:

"Principles to be applied

"(3) In interpreting and applying this act, regard shall be had to the following principles:

1. The principles expressed in the United Nations Convention on the Rights of the Child.

2. The desirability of the office of the Provincial Advocate for Children and Youth being an exemplar for

meaningful participation of children and youth through all aspects of its advocacy services."

0930

In plain language, what we're trying to do here is help guide the interpretation of the act. We want to follow those principles as expressed in the United Nations Convention on the Rights of Children and the office of the Provincial Advocate for Children and Youth should include practices of meaningful participation by children. That's the rationale here.

**Ms. MacLeod:** I'm going to support this government motion. I think it's essential that we have the United Nations Convention on the Rights of Children encompassed in this piece of legislation. I do want it on the record, though, that I would like it one step further. I believe that that province of Ontario needs a children's bill of rights. I think it's something that all three political parties in this Legislature could work on together.

**Ms. Horwath:** Because the government voted down both the NDP and the Conservative motions, we're left in the position of having to support this motion, even though we don't—or at least I don't—believe it's comprehensive enough. It is at least in some ways touching on the real important issues around the rights of the child and also the focus of the advocate's office in terms of ensuring that it really is a young persons' and young people's voice that comes through in all work that is done through that office.

**The Chair:** Further debate? I will now put the question. All those in favour of the motion? Opposed? That carries.

That ends our discussion on section 1. I'll now put the question. Shall section 1, as amended, carry? All those in favour? Opposed? That carries.

The next motion is on page 8, and it's an NDP motion.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Ombudsman

"1.1. Without detracting from the powers of the advocate under this act, the Ombudsman appointed under the Ombudsman Act has full oversight over all services for children, including child welfare and youth justice."

If I could just make a quick comment, we all know that the Ombudsman sent correspondence to the committee. We all know that the Ombudsman made an effort to put out a press release about this issue. We all know that the Ombudsman and myself as well are very concerned—and we're all very concerned, or at least some of us are very concerned—that the work of the child advocate will only be strengthened and made more effective by having Ombudsman oversight over child welfare issues.

The bottom line is that this is an ongoing issue. The government claims to have taken care of it with the Child and Family Services Review Board through Bill 210. We all know that that is not the case. In fact, even the children's aid societies, off the record, at the public hearings acknowledged that that is not the case. Notwithstanding the government's claim that the Child and Family Ser-

vices Review Board decisions are able to be investigated by the Ombudsman, they simply are not. The bottom line is that if we're really going to do the right thing by children in this province, we need to have children's services able to be investigated by the Ombudsman.

**The Chair:** Before we go any further, I am just going to refer to Erskine, Beauchesne and Marleau. I've always wanted to do that, just like Peter Kormos does.

"It is an established principle of parliamentary procedure that an amendment is out of order"—so I'm going to have to rule this out of order—"if it is beyond the scope of the bill or beyond the scope of the clause under consideration.

"The scope of the bill that the House has agreed to by passing second reading of the bill, establishes the parameters of the bill that may be considered by a committee.

"Therefore, an amendment that deals with something that has not been proposed or considered within the scope of the bill after second reading is out of order.

"An amendment is also out of order if it seeks to amend a section of an act when that section is not open in the bill."

Unfortunately, I'm going to have to rule this out of order.

**Ms. MacLeod:** Mr. Chair, may I comment? Despite the fact that we will not be voting on this, I just wanted to add that I really think that there is a critical role in the province of Ontario for the Ombudsman to have investigatory powers here. I would have, if there were a vote, supported my colleague.

**The Chair:** We'll move on then to motion 9, an NDP motion.

**Ms. Horwath:** Hopefully you'll be nicer to me this time, Mr. Chair. I'm just kidding you.

I move that section 2 of the bill be struck out and the following substituted:

"Appointment

"2. The Legislative Assembly shall, by resolution made on the recommendation of a committee of the Legislative Assembly that includes equal representation from every party represented in the assembly, appoint a person as the Provincial Advocate for Children and Youth."

All this motion really does is formalize the process that takes place, in many cases, with our independent officers. I know the government prefers that cabinet make the appointment, but this is modelled after the British Columbia language. I can't recall now if it was legislative counsel or defence for children and youth that provided that language. Nonetheless, it says formally that a three-party committee with equal representation makes the recommendation to the assembly and the assembly then appoints the advocate.

**Mr. Zimmer:** The government is not able to support this. The current language in section 2 of the bill is consistent with the way all other officers of the Legislature are appointed. It's also the language recommended by the Clerk of the Legislative Assembly. An all-party committees is the standard practice in these matters.

**Ms. Horwath:** Just one remark: I acknowledge that that's the standard kind of practice. What this motion was trying to do was simply to formalize it, to actually enshrine it into some legislation so that we will always have that practice for this position.

**The Chair:** I'll now put the question.

**Ms. Horwath:** Recorded vote, please.

## Ayes

Horwath, MacLeod.

## Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 10. This is a PC motion.

**Ms. MacLeod:** I move that section 2 of the bill be struck out and the following substituted:

"Appointment

"2. The Lieutenant Governor in Council shall, on the recommendation of a committee of the Legislative Assembly, appoint a person as the Provincial Advocate for Children and Youth."

I understand the government's rationale with the previous motion. I want to bring this in the context of actually spelling out how we will appoint this person in the Legislature, but this resolution is framed differently than the third party's, insofar as we don't explicitly state that we need to have equal representation. A committee such as this could actually make the decision. This was recommended by Defence for Children International.

The Premier and the Minister for Children and Youth Services both promised that the advocate would be selected through an all-party legislative committee and report directly to the Legislature, and Bill 165 should be amended to entrench within it a method of appointment that engages, I believe, all the political parties in the Legislature in the selection of this advocate. As my colleague from the third party mentioned, similar provisions are made in other provinces, including Newfoundland and Labrador, Saskatchewan and British Columbia. I'd urge my colleagues to support this, and I'll be calling for a recorded vote.

**Mr. Zimmer:** I would ask that my remarks on the previous NDP motion be repeated.

**Ms. Horwath:** Mr. Chair, although I respect and support the initiative of my colleague, I'm concerned about—we see what happens in these kinds of committees when the government of the day has the majority vote. The reason that New Democrats wanted to have it one member from each party was to make a clear statement that the advocate's position is so important that it cannot be politicized by a partisan process. Unfortunately, I'm not going to be able to support my colleague's amendment.

**Ms. MacLeod:** Recorded vote.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Horwath, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 11, an NDP motion. Ms. Horwath.

0940

**Ms. Horwath:** Members of the committee, there's an amendment to the motion, so I'll read the amendment first and then I'll read the amended motion. The amendment to the motion is on page 11:

"Qualifications

"(2) The advocate must be a person with significant experience in areas such as children's mental health, child welfare, developmental services, youth justice...."

Basically we're striking out the words "two or more of the fields of" and inserting instead "areas such as."

I thank the government for bringing forward that change to the motion so that it can be agreed upon and passed through the process.

I'll now go to the main motion:

I move that section 2 of the bill be amended by adding the following subsection:

"Qualifications

"(2) The advocate must be a person with significant experience in areas such as children's mental health, child welfare, developmental services, youth justice, education and pediatric health services."

Recorded vote, please.

**The Chair:** Mr. Zimmer, did you want to say something on this?

**Mr. Zimmer:** The government supports this motion.

**The Chair:** Ms. MacLeod?

**Ms. MacLeod:** I support the amended motion. I would not have supported the original because I thought it was a little exclusive. I think this is a very good balance and a great compromise from the government and the New Democrats, so I'll be supporting this motion.

**Ms. Horwath:** Mr. Chair, it was just brought to my attention that as you read the motion, in the very last sentence between the words "education" and "pediatric health services, the word "and" should perhaps be changed to "or." That just makes it much more clear that any of these particular areas or any other would probably be appropriate. Do I need to read it again with the change?

**The Chair:** I think it's understood by all members of committee.

Did you want a recorded vote on this, Ms. Horwath?

**Ms. Horwath:** Sure.

**Mr. Zimmer:** Can we read the motion once more, just to make sure we don't have a grammatical or—

**Ms. Horwath:** Sure.

"Qualifications

"(2) The advocate must be a person with significant experience in areas such as children's mental health, child welfare, developmental services, youth justice, education or pediatric health services."

**Ayes**

Balkissoon, Horwath, MacLeod, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion carries.

We'll move on to page 12, a government motion.

**Mr. Zimmer:** I move that section 2 of the bill be amended by adding the following subsection:

"Transitional

"(2) The person who, immediately before the coming into force of this subsection, held the title of 'chief advocate' in the Office of Child and Family Service Advocacy continued under section 102 of the Child and Family Services Act shall be deemed to have been appointed as the advocate until an advocate is appointed under subsection (1)."

In plain language, this is a transitional provision that allows the chief advocate in the Office of Child and Family Service Advocacy to become the new advocate until such time as the Lieutenant Governor in Council appoints a new advocate.

**Ms. Horwath:** I support this government motion. I can't think of a person who would be more appropriate to transition us from the current situation to the independent office of the child advocate. If Ms. Finlay is prepared to do the job, I'm sure we're all prepared to support her at it.

**Ms. MacLeod:** The official opposition echoes the commitment by the New Democrats and the government. Of course we welcome her to her new job. I don't know if she knows what she's getting into.

**Ms. Horwath:** She doesn't.

**Ms. MacLeod:** Yes, she doesn't yet because we're not finished with the bill, but we welcome her and congratulate her. I'll be supporting the motion.

**Mr. Zimmer:** Recorded vote.

**Ayes**

Balkissoon, Horwath, MacLeod, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion carries.

Shall section 2, as amended, carry?

All those in favour? Opposed? That carries.

We'll move to page 13, an NDP motion.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Deputy for First Nations

"2.1(1) The advocate shall have a deputy, to be known as the 'deputy advocate for First Nations children located in the north,' who shall,

“(a) be knowledgeable of the cultures, languages and customs of the First Nations peoples and their aboriginal and treaty rights;

“(b) be physically located in proximity to northern and remote First Nations communities; and

“(c) if possible, be of First Nations heritage.

“Other deputies

“(2) The advocate may appoint other deputies, as he or she sees fit.”

We heard from a number of deputants, particularly First Nations deputants, who made clear what we were already aware of, which is the overrepresentation of First Nations children in both the child welfare system and the youth justice system, and in the justice system overall. We're very concerned that this deputy position be enshrined in the legislation, and that it not be left to some time in the possible future.

I was a little bit concerned, to be honest with you, in terms of setting the position as a deputy, but when I heard from First Nations communities themselves who said, “This is what we want. This is what we need. It's unacceptable for the government to do anything less than that,” I agreed. That's what this motion is here for.

**Mr. Zimmer:** The government is unable to support this. The government is supportive of the concept of a deputy advocate for First Nations, but the advocate, as an independent officer of the Legislature, must have the flexibility to structure the office in the way he or she sees fit.

**Ms. MacLeod:** I appreciate the comments by my colleague from the third party. Unfortunately, at this time I won't be able to support this particular amendment, but later on I think we have a compromise amendment that hopefully all three parties will support.

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath.

#### Nays

Balkissoon, MacLeod, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 14. This is a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

“Adequate funding

“2.1 The office of the advocate shall be provided with adequate funding.”

This was recommended by several deputants. A review of child advocacy programs in Canada indicates that the Office of Child and Family Service Advocacy has the lowest budget per capita of any child advocacy program across the country. I think we have to make a statement here today, because I think the advocate must have sufficient funding in order to effectively advocate on behalf of our children and youth. I'll be asking for a

recorded vote, and I hope I have the support of my colleagues.

**Mr. Zimmer:** The government is unable to support this. This is not a suitable legislative provision. The Board of Internal Economy is and will be responsible for reviewing and approving the budget of the Provincial Advocate for Children and Youth.

**Ms. Horwath:** We all saw the chart, provided by the legislative library research and information service, that shows very clearly that Ontario is at the back of the pack when it comes to investment in our child advocate's office and our resources that are put into it. Although I understand the government's position and understand that it probably doesn't belong in the bill as a clause, I am going to support it only because I agree wholeheartedly with the comments of the critic for the Conservative Party. It's important to get on the record anyway the expectation both opposition parties have that when this goes to BOIE, it's going to be seriously considered to have a significant increase in resourcing to the office.

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on then to page 15. This is an NDP motion. Ms. Horwath.

0950

**Ms. Horwath:** I move that the bill be amended by adding the following section:

“Select committee for children and youth

“2.2 There is established, as a committee of the Legislative Assembly, a committee to be known as the Select committee for children and youth, which shall at least annually receive reports from the advocate and carry out other responsibilities regarding children and youth as shall be assigned to it by the assembly.”

Very briefly, members will recall that the advocate in her presentation, and in her written presentation as well, referred to the BC model whereby there's a standing committee that deals with ongoing issues and ongoing matters that come up over time. It's a legislative committee that's a touchstone for the advocate to continue to do good work in the province, and she was supportive of that kind of model here.

I'm simply putting this motion forward to echo and support her call for a committee that is focused on the children of this province. In fact, in the news recently, members will know, particularly Toronto members, there have been all kinds of discussion that if you make your city a good place for children, then you've made a great city. Children's issues are at the top of mind in many

areas across the world. In fact, there's a particular group called Livable City. I can recall that even five or six years ago, when I was on city council, the focus of that group, that was based out of California, was to make your city a child-friendly city and, by doing that, you have improved your community by leaps and bounds.

I believe that's a focus we need to take. I believe we need to get more focused on children's issues in the province. I believe the Premier himself, as well as the Minister of Children and Youth Services and the Minister of Community and Social Services—many of the ministers of the government have spoken, in fact many of the members on all sides have spoken, very eloquently in the Legislature about the importance of our children and that children are our future. We hear that kind of rhetoric on a constant basis.

This is an opportunity for us as a legislative body to bring forward a committee that actually proves that we really mean those words when we say them. I urge the members of the government and the opposition to support this motion. It really does put into place something that is tangible, that begins to say we mean it when we say those fanciful words in regard to our commitment to children's issues in the Legislature.

**Ms. MacLeod:** While I would have preferred a little more flexibility in the wording so that it could be decided upon by the discretion of the independent child advocate, I will be supporting this amendment simply because I think we heard loud and clear from the people we consulted that they believe a committee should assist the advocate. So I will be giving my support to this amendment.

**Ms. Horwath:** Recorded vote, please.

**The Chair:** One moment. Any further debate?

**Mr. Zimmer:** The government is unable to support this. It's the role of the Legislative Assembly to determine committee structures.

**The Chair:** A recorded vote has been asked for by Ms. Horwath.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on then to motion number 16, which is a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

"Emergency fund

"2.2 The funding for the office of the advocate shall include an emergency fund."

This was recommended by a lawyer in Toronto, Michael Cochrane from Ricketts, Harris LLP. He gave, I think, one of the better presentations during our consult-

ations. He just recommended that the advocate should have the funding to engage in on-the-spot remediation when encountering emergencies involving children, and I agree. I agree 100% and put this amendment forward, understanding the fact that this is Board of Internal Economy, but I think we could have a show of support here and direct the Board of Internal Economy to establish that.

**Mr. Zimmer:** The government does not support the motion. The Board of Internal Economy is responsible for reviewing and approving the budget, and emergency funding could be considered by the Board of Internal Economy.

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on then to motion number 17. It's a PC motion.

**Ms. MacLeod:** This is an amended motion, a compromise motion with the official opposition and the government, and I'm hoping the third party will support it as well. How do I do this? Do you want me to read the new, amended motion?

**The Chair:** You can read the amended motion, yes.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

"Deputies

"2.3 The advocate may appoint deputies, including, without being limited to, deputies for youth justice, aboriginal youth and youth in the various geographic regions of Ontario, including youth in northern or remote communities."

We heard many times from the aboriginal community the need for a deputy advocate. We heard from the advocate herself. We heard from the Canadian Foundation for Children and Youth in Law. I believe that there are some children throughout the province who require special attention from the provincial advocate, and I think we need to protect them. We also heard from kids from my region in eastern Ontario who said it would be helpful if they had an advocate they could access. We heard from kids right across Ontario.

I think the wording of this amendment fits with the intent of my party, the third party and the government. I think the government is prepared to step up to the plate, so I'm just urging, on a recorded vote, that all parties support this amendment.

**Ms. Horwath:** I'm going to be supporting this motion, definitely. The thing that I'm a little bit concerned about, and I'm going to put it on the record again, is the fact that exists currently, that First Nations children are right now

to this day and, unfortunately, have been for some time overrepresented in the child welfare system, period.

I think it behooves us to actually set that out in legislation, not leave it to the hope that the BOIE might fund the advocate enough money to actually eventually appoint deputy advocates to be able to take care of that great need. That's my only concern, and I'm going to support it because the intent is supportable. But the reality, and we know the reality around here, is that unless the advocate gets the resources necessary to establish an office that's going to be able to do the job expected of it, that office is not going to be set up.

There's no indication with just this motion as it is that we're taking seriously our obligations and our responsibilities to our First Nations communities in acknowledging the realities of the horrible situations faced by their children. In fact, anybody who wasn't moved to absolute tears from some of the presentations that we had, not only on this bill but on Bill 210 as well, has to be a stone. It's absolutely horrifying. We talk about it from a statistical perspective often, but the reality is absolutely horrifying in terms of the life that these children are leading. It's unacceptable and inappropriate.

I want to say that although I will support this, I really do believe that it behooves us to enshrine in the legislation the obligation of a First Nations deputy because it then obliges the BOIE to fund it. That's all I'm going to say, but I will be supporting this, Mr. Chair.

**Mr. Zimmer:** The government supports this motion. We support the idea of a deputy advocate such as a deputy advocate to represent aboriginal youth. We believe the discretion to do so should rest with the advocate, and this amendment achieves that.

**The Chair:** Thank you. Did you ask for a recorded vote?

**Ms. MacLeod:** Yes.

### Ayes

Balkissoon, Horwath, MacLeod, Oraziatti, Qaadri, Rinaldi, Zimmer.

1000

**The Chair:** The motion carries.

First of all, before I move on the next motion, on sections 3, 4 and 5, is there any debate, discussion? Let's do them together then. Shall sections 3, 4 and 5 carry?

**Mr. Zimmer:** Hold it.

**The Chair:** There were no amendments put forward.

**Mr. Zimmer:** Are you moving 3, 4 and 5?

**The Chair:** Yes.

**Ms. MacLeod:** I have an amendment for 5.

**Mr. Zimmer:** I have in my binder a suggested PC motion on number 18 on section 5.1.

**The Chair:** Yes, that addresses a new section, 5.1.

**Mr. Zimmer:** All right. Thank you.

**The Chair:** What I wanted to put forward is the question as to whether sections 3, 4 and the present section 5 shall carry. Carried. Thank you.

Then we move on to page 18. This is a PC motion which addresses section 5.1. Ms. MacLeod.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

"Non-application of CECBA

"5.1 The Crown Employees Collective Bargaining Act, 1993 does not apply to the advocate or the advocate's staff."

This was recommended twice, once by DCI and once by a young lady named Sarah-Jane Dagg from my city of Ottawa, people who have experience in the child welfare system.

"Legislation dealing with Ontario's public service raises a concern that although the advocate will be independent, the independence of the advocate staff may be compromised. There's a perceived conflict between effective child advocacy and union membership in common with other public servants, and this conflict arises in two ways: The need for child advocacy increases significantly during a public service strike as they cause significant disruption for young people living in facilities affected by the strike, and the potential perception of the advocate as investigator or adversary to workers and service provider due to the advocate's function of responding to complaints."

I received a little handwritten note from a friend of mine who feels very passionate about child advocacy, and I want to read into the record just the statements. I want to do this for the government and for my colleague in the third party. There are three points:

"(1) Similar positions reporting to the Legislature—Auditor General, Chief Electoral Officer and Environmental Commissioner—all employ staff through employment contracts. These contracts are comparable in compensation to similar positions in the public service;

"(2) Practical issues"—and they reference specifically Sarah-Jane Dagg's presentation to us: "The difficulty with union members reviewing the work of other union members, particularly during a strike; and

"(3) Intent is to make the advocate independent. It seems counterproductive to then have unionized staff pulling the office back into the Crown Employees Collective Bargaining Act."

I think these points say it all, and it's important that we reach a compromise here to ensure that this office is fully independent, but more than that, what we all have to think about right now are the children. The children spoke here and told us that they did not want to be part of union versus government in political strikes. They don't want to be part of that. They want to be receiving the care they deserve, and I think that this amendment needs to be supported on a recorded vote.

**Ms. Horwath:** I certainly did listen to the comments that were raised during the hearings, and I understand that there is tension around the possibility of a strike and how that would affect the work of an advocate's office, particularly if the advocate's office staff were organized in the same bargaining unit as perhaps, let's say, striking staff at a correctional facility who are in the same

bargaining unit, which would be OPSEU. But I don't believe it's appropriate for us in this bill to strip workers of their right to bargain collectively. Not only do I not think it's appropriate, but I think it's a matter of future discussion that needs to take place with the union, perhaps through a memorandum of understanding or some other vehicle through which an understanding can be undertaken to be sure that children who are in a facility where a strike is taking place are not put at risk. I think there are many ways to do that in a mature and negotiated way as opposed to simply stripping workers of their collective bargaining rights.

I don't like the kind of heavy-handed, negative type of message that sends to workers. I don't like the connotation that any piece of legislation can be brought forward and simply strip workers of their rights to bargain collectively. I think we can gain the same kind of gains through a much more conciliatory approach as opposed to a heavy-handed, negative, punitive type of approach that strips workers of their collective bargaining rights.

**Mr. Zimmer:** The government is unable to support this motion. The amendment does have the potential effect of preventing successor rights. This government supports the concept of the transfer of successor rights.

**Ms. MacLeod:** I'd just like to respond to both comments. First, I don't think we should be putting anyone ahead of the children in this piece of legislation. Second of all, there has already been a precedent set with three other officers of the Legislature to use a different method, with pay compensation being similar to that in the public service. I just want to add that comment and just remind my colleagues that it was not lawyers who came in and told us this, and it was not the labour force; it was children. People who actually live as crown wards told us that they would feel more comfortable. If this bill is for the children and we wanted to have their input, then we should vote according to their wishes.

**Ms. Horwath:** I'm not going to be able to support this motion, notwithstanding the couching of it by the member of the official opposition. We all know that party's record on labour relations. We don't want to go back down that road in this province, in my opinion. We need to work with our people in our bargaining units. We need to work with our workers and make sure that children's rights and interests are protected, no matter what. So I'm not going to support it.

**The Chair:** Thank you. Did you ask for a recorded vote on this?

**Ms. MacLeod:** Yes.

#### Ayes

MacLeod.

#### Nays

Balkissoon, Horwath, Oraziotti, Qadri, Rinaldi, Zimmer.

**The Chair:** That motion is not carried.

Before we move on to motion 19, members of committee, there are certain sections of the bill that have not had any amendments, so I'm just going to ask whether or not those sections shall carry.

We'll start with section 6. Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall section 10 carry? Carried.

Shall section 11 carry? Carried.

Shall section 12 carry? Carried.

Now we move on to section 13—

**Mr. Zimmer:** Chair, did we do 5.1?

**The Chair:** Yes, we just did it. We had a recorded vote and it did not carry.

Now we move on to page 19. It's an NDP motion with regard to section 13 of the bill.

**Ms. Horwath:** I move that section 13 of the bill be amended by adding the following clause:

"(b.1) provide advocacy to children who are attending schools, whether public or private;"

I think it speaks for itself.

**The Chair:** Any further debate? I'll put the question.

**Ms. Horwath:** Can I get a recorded vote?

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to number 20, a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

"(b.1) provide advocacy to children with special needs;"

I think the motion speaks for itself.

**The Chair:** Thank you. Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move to page 21, a PC motion.

1010

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

"(b.2) provide advocacy to deaf and hard-of-hearing students;"

I think that this speaks for itself. It's something that we heard consistently throughout our consultations. I'm hoping that there's a government motion—once this one gets voted down—that deals with this.

**Mr. Zimmer:** The government is unable to support this motion. The government has its own motion, number 27, which in our view covers the point.

**The Chair:** Any further debate? None? I'll now put the question. All those in favour of PC motion 21? Opposed?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 22. This is a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

“(b.3) provide advocacy to young persons who, before the coming into force of this act, were under the jurisdiction of the chief advocate for the Office of Child and Family Service Advocacy;”

I think we heard from the chief advocate that she expected that we should continue to have under her mandate the ability to provide services and advocacy for those children she currently serves. I think that this is entirely consistent with what we heard from so many of the children and youth who appeared before us. I think the amendment speaks for itself.

**Mr. Zimmer:** The government is unable to support this amendment. We will be bringing forward specific amendments later this morning to cover this point.

**Ms. Horwath:** Can I just get clarification? You're talking about the ones in the package, right? Or are you going to table new ones?

**Mr. Zimmer:** In the package.

**Ms. Horwath:** Thank you. You never know.

**The Chair:** Did you ask for a recorded vote?

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to 23. It's a PC motion.

**Ms. MacLeod:** I keep coming back for more, Mr. Chair.

**The Chair:** Keep coming.

**Ms. Horwath:** Thank God you've got stamina.

**Ms. MacLeod:** I know—and a positive attitude.

I move that section 13 of the bill be amended by adding the following clause:

“(b.4) provide advocacy to children and youth who, due to the complexity of their special needs, require services from different ministries and service sectors;”

This was recommended by the Psychiatric Patient Advocate Office, which felt that the four functions of the advocate listed in section 13 of the bill were too narrow and should be expanded to include providing advocacy and rights protection services to all children and youth in Ontario seeking or receiving government services. Again, I think this resolution speaks for itself.

**Ms. Horwath:** Two things: First, I'm supporting all of these because they reflect the first motion that I put on the table at the beginning of this clause-by-clause process. The all-encompassing principles and details around the act were hoping to be covering all of these issues. So I am supporting them all because I think that they're important and need to be reflected in the legislation.

But I do have a question, and that is, why do we jump from this motion, which is (b.4) of the bill, and on the next page, page 24, we go to (b.7), and then (b.8), (b.9), (b.10)? I don't know why. I guess the numbering is not that important. I guess it's the actual content, not the numbering.

**Ms. Filion:** I can't really speak to that, but we can fix those. Those are editorial matters that can be dealt with. They will be put in the proper order should the motions be adopted.

**Ms. Horwath:** Okay. So I just want to put on the record again that I'm supporting my colleague on her motion.

**Mr. Zimmer:** Providing advocacy services to children with special needs is already clearly and adequately included in the bill. Specifically, children who are seeking or receiving services under the Child and Family Services Act fall within the advocate's mandate.

**The Chair:** Did you call for a recorded vote, Ms. MacLeod?

**Ms. MacLeod:** Yes.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to a PC motion on page 24.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

“(b.7) provide advocacy to young persons in Ontario receiving services from nongovernmental agencies, including, without being limited to, private schools, camps,

hospitals, and those providing services to unaccompanied minors.”

This is a recommendation that resulted from the Ontario Association of Children’s Aid Societies’ presentation. I thought that their presentation was excellent. They suggested the functions of the advocate as listed in the legislation are too narrow. We didn’t hear that just from the children’s aid societies of Ontario; we heard that from several people. So I think that it should be expanded to include advocacy and rights protection services to children receiving services from private and non-governmental organizations or agencies. I would ask for a recorded vote.

**Mr. Zimmer:** The government is unable to support this. The proposed amendment goes far beyond the advocate’s current mandate. The intent of Bill 165 is to make the advocate independent, not to expand the mandate.

**The Chair:** A recorded vote’s been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Zimmer.

**The Chair:** That does not carry.

We move on to page 25, a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by striking out “and” at the end of clause (b) and by adding the following clauses:

“(b.8) provide advocacy to children who are pupils of provincial schools for the deaf, schools for the blind, and demonstration schools under section 13 of the Education Act;

“(b.9) provide advocacy to children and youth who are held in custody under the responsibility of a police force or a municipality under section 16.1 or 137 of the Police Services Act;

“(b.10) provide advocacy services to young persons who are subject to probation or supervision in the community under the Youth Criminal Justice Act (Canada); and”

This was recommended by the Defence for Children International. Three groups that are currently served by the Office of Child and Family Service Advocacy are excluded from the current legislation, including students in provincial schools for the deaf, schools for the blind and demonstration schools; young people in police or court holding cells and young people transported to, in or from police or court holding cells; and young people receiving non-custody services under the Youth Criminal Justice Act. So I think this really needs to be included, and I encourage my colleagues to support it. I am calling for a recorded vote.

**Ms. Horwath:** Members of the committee just need to slide their eyes to the next page to see why I wholeheartedly support this motion.

**Mr. Zimmer:** The government is unable to support this for three reasons. One, government motion 27 specifies that advocacy services will be provided to students attending provincial schools for the deaf, schools for the blind, and those attending demonstration schools for students with learning disabilities. This reflects the advocate’s current scope of services. The second point: Young persons who are subject to probation or supervision in the community under the YCJA are already covered by this legislation. The third point: Our understanding from the current advocate is that expanding the advocate’s power to include children and youth under the Police Services Act would require far more consultation before being given consideration.

**The Chair:** A recorded vote’s been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

As Ms. Horwath has pointed out, on page 26, the NDP motion is a duplicate of the previous motion, so I’m going to rule it out of order.

We’ll move on to government motion 27, Mr. Zimmer.

1020

**Mr. Zimmer:** I move that section 13 of the bill be amended by striking out “and” at the end of clause (c) and by adding the following clauses:

“(c.1) provide advocacy in accordance with clause 14(1)(j.1) to children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act;

“(c.2) provide advocacy in accordance with clause 14(1)(j.2) to children and youth with respect to matters that arise while held in court holding cells and being transported to and from court holding cells; and”

The rationale, in plain language here, is that the following functions are added within the text of the bill: First, the advocate will provide advocacy services to children who attend the provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act. These services will be provided in accordance with clause 14(1)(j.1). The advocate will provide advocacy services to children and youth held in court holding cells or being transported to and from court holding cells. All of these are going to be provided in accordance with clause 14(1)(j.2).

**Ms. Horwath:** I am going to possibly support this but I’ve got a real problem with a part of it. When you look at clause (c.1), which refers to clause 14(1)(j.1), and then

you move to government motion 34 and you look at what that says in (j.1)—and I'm going to read it into the record, because this is problematic from my perspective—it says that the institutions described in motion 27 “receive and respond to complaints from children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act and use informal methods to resolve those complaints.”

In other words, the government is two-tiering the services for children in schools for the deaf, schools for the blind and demonstration schools. What they're saying is they're not getting the full force of the advocate's representation. They're prescribing that the advocate use informal methods to resolve the complaints. I don't think that's strong enough.

We heard at committee from Gary Malkowski, a former member here in this Legislature, graphic descriptions, from him and other representatives, particularly from the deaf, hard-of-hearing and culturally deaf community, saying that deaf children particularly were very often—extremely often—victims of sexual abuse. So for the government to then think it's all right to have informal processes for their opportunities for accessing the services of the advocate, and for the advocate's involvement in their cases to be informal, prescribed in the legislation—I'm just not happy with that. In fact, I think I've just convinced myself that I'm going to have to vote against that motion. I just don't think it's appropriate.

Now, maybe there's some piece that I don't understand or some reason why it's in there, but it seems to me we heard very loudly and very clearly from the deaf community, from Gary Malkowski and others who were asking us—begging us, really—to make sure that their interests were covered off in the bill. In fact, I have an open letter right here from Mr. Malkowski. It was sent to a number of members of this Legislature, including—well, you can read it yourself, because it's in all of our packages.

Again, I really urge the government to not go down this road and not restrict or reduce or constrict the kinds of advocacy the advocate can undertake with respect to these very vulnerable children. It's just not acceptable.

On clause (c.2), in terms of the other piece of the motion the government is putting forward, I'm okay with that. I don't see anything glaring in terms of being problematic with that. But I do really have a problem with the first section, so I'm not going to be able to support it. I'm going to ask for a recorded vote too, please.

*Interjection.*

**Mr. Zimmer:** Just by way of reply—is it important?

**Ms. MacLeod:** I want to hear the government's response before I make my comment.

**The Chair:** Okay, sure.

**Ms. MacLeod:** I am going to support this resolution because I think it's important that it gets in there. I don't necessarily interpret this resolution the same as my

colleague, but I want to hear from the government their rationale before I make a firm decision.

**Mr. Zimmer:** During the public hearings, deputants said that the act should clearly reflect the range of services that the advocate currently provides, including services to children attending provincial and demonstration schools, and children and youth held in court holding cells or being transported to and from court holding cells.

These services are currently provided by the MOU and operational protocol respectively and would have required regulations to be prepared under the original drafting of Bill 165. These amendments codify the provision of these services, making the advocate's mandate clear and assuring that these groups are clearly recognized as having a right to the services of the advocate.

**The Chair:** Further debate? A recorded vote has been asked for.

### Ayes

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

### Nays

Horwath.

**The Chair:** So the motion carries.

**Mr. Zimmer:** Mr. Chair, it's 10:30. Could we have a two- or three-minute break?

**The Chair:** A two- or three-minute break?

**Mr. Zimmer:** You know the kind of break I'm referring to.

**The Chair:** A coffee break.

**Mr. Zimmer:** Just two or three minutes.

**The Chair:** All right. My watch says 10:27. We'll come back at 10:35 sharp. Is that okay?

**Mr. Zimmer:** At 10-3-0?

**Ms. Horwath:** That's 10:30 sharp.

**The Chair:** Yes.

*Interjections.*

**The Chair:** All right, if you can do it in three minutes, that's great. We're recessed for a few minutes.

*The committee recessed from 1027 to 1034.*

**The Chair:** We're right on time. We are now back in session. This is the committee on justice policy. We are on an NDP motion on page 28.

**Ms. Horwath:** I move that section 13 of the bill be amended by adding the following subsection:

“Interministerial provincial advisory committee:

“(2) The advocate shall continue the committee known as the interministerial provincial advisory committee, or establish a substantially similar committee.”

This was a direct request from the advocate to make sure that that committee was not dissolved.

**Ms. MacLeod:** The official opposition supports this motion. I just want that on the record.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion is not carried.

That ends the amendments on section 13. Shall section 13, as amended, carry?

**Ms. Horwath:** Recorded vote.

**Ayes**

Balkissoon, MacLeod, Orazietti, Qaadri, Zimmer.

**Nays**

Horwath.

**The Chair:** The section carries.

We'll move on to page 29, a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

“(a.1) investigate the withdrawal of complaints by children or youth who have been approached by the advocate;”

This was recommended by the Psychiatric Patient Advocate Office for very good reasons. For kids who are complaining about caregivers, that can cause undue stress and anxiety, especially for vulnerable kids who are in custody of adults who often make decisions about when they will leave a program or service. The power and balances may serve to silence some children and youth who otherwise would have the very legitimate and real complaints that require investigation by the advocate.

**Mr. Zimmer:** The government appreciates the intent of the proposed amendment, but the current provisions of Bill 165 are that the advocate can make efforts to pursue private discussions with children or youth who withdraw their complaints. We have to maintain the advocate's ability to partner with children and youth and use his or her discretion in these matters.

**Ms. MacLeod:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 30, a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

“(a.2) receive and respond to complaints and inquiries from persons 18 years of age or older about incidents that occurred when the person was a minor;”

The current legislation does not make it clear if the advocate will have the mechanism to investigate these complaints on behalf of these children to whom incidents happened when they were minors.

I'd appreciate a recorded vote.

**Mr. Zimmer:** There's a government motion later on which covers this territory.

**The Chair:** Any further debate? A recorded vote has been asked for.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

Page 31, an NDP motion.

**Ms. Horwath:** I move that clause 14(1)(f) of the bill be amended by striking out “and” after subclause (ii) and by adding the following subclauses:

“(ii.1) provided to children under section 13 of the Education Act,

“(ii.2) provided to children or youth under section 16.1 or 137 of the Police Services Act,

“(ii.3) provided to young persons under the Youth Criminal Justice Act (Canada), and”

It's pretty clear. We've been through this a couple of times. I'm just reiterating my support for this initiative.

**Ms. MacLeod:** I have a very similar motion after this one that's going to be ruled out of order; that's why I support it wholeheartedly.

**Mr. Zimmer:** The government can't support this. It's covered in government motion number 27.

**Ms. Horwath:** Recorded vote.

1040

**Ayes**

Horwath, MacLeod

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer

**The Chair:** The motion does not carry.

Members of committee, on page 32, the PC motion is a duplicate of the NDP motion that we just voted on, so I'm going to rule it out of order as being a duplicate.

We'll move on then to number 33—

**Ms. MacLeod:** This might be some housekeeping, but I'd like to withdraw Conservative motion 37. It is exactly the same as the New Democrat motion for clause 14 (1)

(h.1) that we're about to read. I will be supporting her motion.

**The Chair:** I think we require a motion to withdraw, but I don't think there's going to be opposition.

*Interjection.*

**The Chair:** You can just withdraw? Okay, thank you. We move on to page 33, NDP motion, Ms. Horwath.

**Ms. Horwath:** I move that subsection 14 (1) of the bill be amended by adding the following clause:

"(h. 1) conduct critical incident and child death reviews;"

Again, very briefly, this was something that was raised during hearings by the advocate. Although there's an acknowledgement that there needs to be some work done on how that happens and exactly what role the advocate will take and how that will be undertaken, that was something that I thought would be important to enshrine in legislation so that we're all aware that that's something that we would expect the advocate to undertake.

**The Chair:** And you'll be requesting a recorded vote? Okay.

**Ms. MacLeod:** Just quickly, I would like to add the official opposition's support for this amendment simply because we had a similar amendment later on in the package that we've withdrawn. At present, there's no independent body in Ontario that conducts critical incident or child death reviews. A number of child advocates across the country do have this ability, so I support it.

**Mr. Zimmer:** The government does not support this amendment. Child death reviews are the responsibility of the Office of the Chief Coroner, which is an independent body. Our government has worked and is working directly with the Office of the Chief Coroner to develop a more comprehensive approach to child death reviews and reporting, which has already been implemented.

#### Ayes

Horwath, MacLeod

#### Nays

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer

**The Chair:** The motion does not carry.

Moving on to page 34, this is a government motion. Mr. Zimmer, do you want to read the motion?

**Mr. Zimmer:** I move that subsection 14 (1) of the Bill be amended by adding the following clauses:

"(j.1) receive and respond to complaints from children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act and use informal methods to resolve those complaints;

"(j.2) receive and respond to complaints from children and youth with respect to matters that arise while held in court holding cells and transported to and from court holding cells;"

These are companion amendments to section 13. These clauses clarify that the advocate will provide direct delivery of advocacy services to students attending provincial or demonstration schools and children and youth held in court holding cells or being transported to and from court holding cells. "Informal methods" simply refers to the fact that, as is currently the case, the advocate can compel agreement between the parties but can use moral suasion. The language exists currently in section 14 of the act.

**Ms. Horwath:** I'm not going to support this motion. I don't think it's appropriate to say to the deaf community that their children are not equal to everybody else's children in terms of accessing the services of the child advocate. I think it's wrong. I don't understand why the government thinks it's okay to allow for legislation to go forward that treats children—because of their disability—differently from other children. It's inappropriate, Mr. Chair. We heard from the deaf community very clearly that they want and they need—and that their children are particularly vulnerable, and that's why they want and they need—the services of the independent child advocate. The problem is—this is why we need a committee, I have to submit, a standing or select committee on these issues—it's not good enough to say that because it's the Education Act or because it's this act or because these kids are here or these kids are there we have to have a hands-off approach when it comes to being covered by the office of the independent child advocate. It is unacceptable. Children are children. Deaf children, as we heard, are vulnerable particularly to sexual predators, particularly to sexual assault. It's just unacceptable.

I know that in the process of the hearings what came up as well was the frustration, particularly by one of the parents who presented, indicating an extreme level of frustration around lack of services for ASL for children in schools, that their children are going largely uneducated in this province because there are not appropriate services and there are not appropriate education assistants to help with their education.

The bottom line is, regardless of that scenario, that's exactly why we need to have them fully covered with the services of the child advocate office. These are the systemic issues that the child advocate office needs to bring to the light of day so that perhaps the impetus will be there to provide the appropriate services to these children.

So I cannot support this and I will not support it. I wish the government would reconsider, because I think it sends a very, very odious message to children with disabilities and their parents.

**The Chair:** Further debate? None?

So with regard to government motion on page 34—

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer.

**Nays**

Horwath.

**The Chair:** The motion carries.

We'll move on to page 35. It's an NDP motion.

**Ms. Horwath:** I move that subsection 14(1) of the bill be amended by striking out "and" at the end of clause (o) and by adding the following clause:

"(o.1) assist children and youth with complex special needs and their families to access appropriate services from ministries, agencies and service providers and conduct committees and case conferences for the benefit of children and youth with complex special needs and their families; and"

Again, this came up in hearings; I'm not going to belabour the point. It's about children with special needs and making sure they're included, since they were actually the impetus for the child advocate office to exist in the first place.

**Ms. MacLeod:** I have a very similar motion later on, so I will be supporting this motion; hopefully it will pass and mine won't be needed.

**The Chair:** Mr. Zimmer, do you have any comments?

**Mr. Zimmer:** No.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll go on to page 36. This is a PC motion.

**Ms. MacLeod:** This is exactly the same—

**The Chair:** This is a duplicate of the previous motion.

**Ms. MacLeod:** Yes, just a different order, but the same wording.

**The Chair:** So I'm going to rule it out of order. Don't take it personally.

**Ms. MacLeod:** Too late.

**The Chair:** I think you did the same with 37; you withdrew that one.

**Ms. MacLeod:** I did.

**The Chair:** We'll move on to number 38. This is a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

"(r) investigate third party complaints where appropriate;"

This was recommended by the Psychiatric Patient Advocate Office. The current legislation at this point in time does not make it clear if the advocate will have a mechanism to receive third party complaints, which may be appropriate in some circumstances. So I urge my colleagues to consider that.

**The Chair:** Any further debate?

**Ms. MacLeod:** A recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to number 39, which is a PC motion.

**Ms. MacLeod:** Well, Mr. Chair, I'm just like a Timex watch: I keep taking a licking but I keep on ticking.

I move that subsection 14 of the bill be amended by adding the following subsection:

"Proactive

"(1.1) Nothing in this act requires the advocate to wait for a complaint where the advocate is of the opinion that action needs to be taken."

This was recommended by Michael Cochrane of Ricketts, Harris LLP. As I indicated earlier, he gave a brilliant presentation to this committee, and he suggested that the advocate should be specifically authorized to be proactive in its inquiries and the office should not be complaint-driven. I think that having an independent advocate who is proactive would really be beneficial to the children and youth in this province.

1050

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 40, a PC motion.

**Ms. MacLeod:** I move that subsection 14(3) of the bill be struck out and the following substituted:

"Summons, etc.

"(3) The advocate may issue summons, enforce the attendance of witnesses, compel testimony under oath and compel witnesses to produce records."

This was recommended by the Psychiatric Patient Advocate Office. Without the ability to investigate complaints or systemic issues, the effectiveness of the advocate is diminished. The advocate must have more than just moral authority or powers of persuasion. The advocate must have legal authority to monitor and enforce compliance.

**The Chair:** Further debate?

**Ms. MacLeod:** Recorded vote, please.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 41, a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Documents

“(3.1) Despite subsection (3), the advocate has the right to access documents required for an investigation.”

This was recommended by the Canadian Foundation for Children, Youth and the Law and the Office of Child and Family Service Advocacy, whom I believe are two experts in the field of independent child advocacy and children’s advocacy in general, and I believe that we need to support this resolution.

**Mr. Zimmer:** We’re unable to support this. The information and privacy provisions in this piece of legislation were developed carefully and thoroughly in consultation with the Information and Privacy Commissioner.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

**Ms. Horwath:** I just wanted to include a comment in this regard. I understand that there is real concern about the way that the government has dealt with the freedom of information issues in the bill, and it’s problematic. That’s what we heard loud and clear. I know my colleague and myself, a little later on, are just trying to figure out how to fix it. There are a couple of resolutions in that regard, because I think what has been done is overkill. That’s certainly what we’ve been hearing.

**The Chair:** Any further debate on the PC motion? Seeing none, I’ll put the question.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to page 42. This is an NDP motion.

**Ms. Horwath:** I move that subsection 14(4) of the bill be struck out and the following substituted:

“Right to enter

“(4) The advocate has the right to enter any place where a child or youth is receiving services described in section 13.

“Notice

“(4.1) Upon entering a place to communicate with a child or youth or to undertake a review, the advocate

shall notify the person in charge of that place or the person who has custody or control of the child or youth.”

Very briefly, although there’s a PC motion that’s similar coming up next, which probably will still be in order because it is different, I included in mine that the access needs to take place not only when it’s a response to a particular youth complaint but when there’s an issue of review that the advocate needs to undertake, and that the advocate needs to be able to access a place without providing prior notice and without providing a prior heads-up. Just simply being able to access is absolutely required if the advocate is going to be able to do her or his job.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 43 we have a PC motion.

**Ms. MacLeod:** I move that subsection 14(4) of the bill be struck out and the following substituted:

“No infringement on access

“(4) The advocate may enter any place where a child or young person is receiving services under section 13 without delay or restrictions and without the requirement to provide advance notice.”

This was recommended by the Canadian Foundation for Children, Youth and the Law, as well as the chief advocate for the Office of Child and Family Service Advocacy, whom I believe we should take some guidance from on this particular matter. I’ll be asking for a recorded vote.

**The Chair:** Thank you. Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 44, which is a PC motion.

**Ms. MacLeod:** I’m beginning to take personal—

**The Chair:** No, don’t take it personally.

**Ms. MacLeod:** I’m teasing.

I move that subsection 14(4) of the bill be struck out and the following substituted:

“Right to enter

“(4) The advocate has the right to enter any place where a child or youth is receiving services described in section 13.

“Notice

“(4.1) Upon entering a place to communicate with a child or youth, the advocate shall notify the person in charge of that place or the person who has custody or control of the child or youth.”

This was recommended by the Defence for Children International—Canada, who I believe form the basis of much of our knowledge on this piece of legislation. I encourage my colleagues to support it. We’ll be asking for a recorded vote.

**The Chair:** Thank you. Any further debate? None.

### Ayes

Horwath, MacLeod.

### Nays

Balkissoon, Oraziatti, Qadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

We move on to page 45. This is a government motion.

**Mr. Zimmer:** I move that subsection 14(4) of the bill be struck out.

The rationale here is that during public hearings the deputants requested that the advocate have unfettered access to children and youth, which equates to power of entry. We recognize that providing advance notice to a service provider of the advocate’s intention to enter could have the unintended consequence of preventing the advocate from having a true impression of the children’s normal environment. To address the concern about access of the advocate, we propose to strike subsection 14(4) out.

**Ms. Horwath:** I’m a little nervous, and I just need some reassurance that the government feels that by striking out this section it still covers off the opportunity for the advocate to actually enter premises. Now it’s silent on that, so I’m a little bit worried about whether or not it’s covered off. I’m not being facetious; I want to know that it is covered off in another part of the bill which proactively allows the advocate to actually enter premises.

I agree with the government striking it out, and I’m pleased that they’re doing that, so I don’t want to give the wrong impression. The minister told me the other day in the House that she was doing that, and I support that idea. But being silent on everything else, I’m really worried.

**Mr. Zimmer:** Ministry counsel will speak to that narrow point.

**The Chair:** Good morning. Could you please identify yourself.

**Ms. Cindy Crandall:** My name is Cindy Crandall, and I’m counsel for the Ministry of Children and Youth Services.

I wanted to address your issue and just point to government motion number 58, which amends subsections

16(2) and (3) of the bill. If you look at that, what’s being proposed goes hand in hand with motion 45.

**Ms. Horwath:** All right. But this is only—I’m sorry. I think it’s an important point, with respect. It’s specific to access to a child or youth, and it’s specific to access to a child in care in subsection 16(3), but what it doesn’t speak about is the right of an advocate to enter a premises on a review. It’s only specific to a child, as opposed to if the advocate needs to do a review or is doing an investigation—although we don’t call it an investigation, it’s an investigation by any other name. Is that covered in other government amendments?

1100

**Ms. Crandall:** The intention was that the advocate have the right to the child. The advocate does not have the right of entry into a premise for the purpose of conducting a review. It is the right for access to a child to receive and respond to complaints from the child.

**Ms. MacLeod:** I’m not sure that addresses my concern. My concern is the right of entry to get access to that child. For example, if a child in the care of the welfare system—there could be delay based on the fact that—

*Interjection.*

**Ms. MacLeod:** Yes, there could.

*Interjection.*

**Ms. MacLeod:** How can you assure me of that? I think that there needs to be a positive reinforcement of the right to entry and access stated explicitly in this piece of legislation. I could see right now that if the advocate decided, based on this legislation—unless you can reassure me otherwise. If the chief advocate or the independent advocate walked into a facility to try and access a child, they could receive, despite the fact that they have a right prescribed later on—they could be faced with delay by anybody who’s staffing or supervising that facility.

**Ms. Crandall:** If you refer to the proposed amendment in 58, which would add subsection 16(3), it says, “Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advocate”—and it goes on from there.

**Ms. MacLeod:** And what is unreasonable? I don’t think this is strong enough and I’ll be voting against it.

**Mr. Zimmer:** Thank you very much for the answer to that question.

**Ms. Horwath:** I guess we’ll debate it more when we get to government motion 58. I’m going to support the striking out of this section because I agree that unfettered access is necessary, and what this section does is cause that to not be able to happen. There needs to be prior notice. So I am going to support it, with the caveat that when we get to 58, I would ask the government and the minister’s staff to really look at that motion 58 before we get there because it’s got problems. I’m really concerned about not allowing the advocate access for the purposes of a review and having that articulated in the bill, as well as some of the language around “unreasonable delay” and “reasonable private access.” Those are mealy-mouthed little words that can cause big problems. So I’m

just asking in advance that the government look at their motion 58 and see if they can amend it before we get there. Having said that, I do support the striking out. That's where we are, right? The striking out of 14(4)?

**The Chair:** Yes.

**Ms. Horwath:** Thank you, Mr. Chair. I apologize for the delay.

**The Chair:** All those in favour of the motion?

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Balkissoon, Horwath, Orazietti, Qaadri, Rinaldi, Zimmer.

#### Nays

MacLeod.

**The Chair:** The motion carries.

We move on to page 46. It's a PC motion.

**Ms. MacLeod:** I'd like to amend it. I'd like to say "subsection 14(4) of the bill."

I move that section 14 of the bill be amended by adding the following subsection:

"Entry without notice

"(4) In case of emergency, the advocate may enter premises and facilities without notice."

I think it's a much more positive reinforcement of the access that the advocate needs. I think there should be no restrictions on entrance, and I think we should be making a positive statement that she can enter without notice.

**The Chair:** So the only change you made was 14—

**Ms. MacLeod:** Without subsection (4), which was just struck out, I think we need to add something that's positive: entrance without notice.

**The Chair:** Yes, I understand. Any further debate on this?

**Mr. Zimmer:** Government motion 58 deals with this point.

**Ms. MacLeod:** I ask for a recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 47 there's an NDP motion.

**Ms. Horwath:** I move that section 14 of the bill be amended by adding the following subsection:

"Evidence

"(4.2) Despite subsection (3), the advocate may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that

is relevant to the work of the advocate to furnish to him or her any such information, and to produce any documents or things which in the advocate's opinion relate to any such matter and which may be in the possession or under the control of that person, and for that purpose may summon witnesses and administer oaths."

Very briefly, this is to try to cover off the access to information for the advocate without using legal language that would consider it to be an investigation, because we heard very clearly that powers of investigation are not something that would be appropriately ascribed to an advocate whose role it is to advocate for one side, the child's, which is totally appropriate. "Investigation" connotes a non-biased approach, and that's not what we're looking at here. We're looking at advocacy for the children from their perspective. What this tries to do is say that in that role of advocate, particularly in reviews and in the gathering of information, it's clearly stated that the advocate has access and can ask for information from various sources.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 48. This is an NDP motion.

**Ms. Horwath:** I move that section 14 of the bill be amended by adding the following subsection:

"Where no action taken

"(4.3) Where the advocate is of the opinion, after taking a reasonable amount of time, that appropriate action has not been taken with respect to a matter where the advocate provided advocacy, the advocate may bring the matter to the attention of any or all of the Premier, the Legislative Assembly or the general public, as the advocate sees fit."

This is just to reiterate the advocate's ability to bring attention to the issues that she or he is dealing with.

**The Chair:** Any further debate on this? No debate?

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 49. It's a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Reconsideration

“(6.1) The advocate may reconsider a decision not to take action, if requested by the person who made the initial complaint.”

This was put forward by the Psychiatric Patient Advocate Office. The bill requires that the advocate give the complainant notice in writing of the advocate’s decision not to act on a complaint. The section should be amended to provide an appeal mechanism whereby the advocate has the power of reconsideration. Such a procedure would better protect the rights of children and youth.

**The Chair:** Any further debate?

**Ms. MacLeod:** A recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 50. It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Direct contact

“(8) The advocate has the right to have direct contact with children and youth to whom this act applies.”

With respect to the defeat of my motion on subsection (4) dealing with positive entry, I think we need to have some positive reinforcement, which I do not think motion 58 addresses. I support this and I will be asking for a recorded vote.

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

Page 51: It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Advisory committee

“(9) The advocate may establish an advisory committee.”

This justice committee has actually struck down, I think, three amendments previous to this. I think It’s necessary, in the absence of them wanting to put in an IPAC and a select committee, that at the very least we allow the advocate to have the power to appoint an

advisory committee. I think we heard that several times throughout the deputations.

I’ll be asking for a recorded vote.

1110

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 52. It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Subcommittees, etc.

“(10) The advocate may establish subcommittees or expert panels to address specific rights and entitlements facing children and youth.”

If the independent advocate wants to do this, I think that we should provide her with the ability to do so.

We’ll be asking for a recorded vote.

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

That completes the amendments to section 14, so I’ll now put the question. Shall section 14, as amended, carry?

**Ms. MacLeod:** Recorded vote.

**Ayes**

Balkissoon, Orazietti, Qaadri, Zimmer.

**Nays**

MacLeod.

**The Chair:** The section carries.

We move on to the next motion, which is on page 53. It’s a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

“Children’s bill of rights

“14.1 The advocate shall establish and publish a children’s bill of rights for Ontario, and oversee its implementation.”

I think there could be no finer person to be put in charge of developing this bill of rights and reporting back to a legislative committee than the chief advocate. I would beg the government members to support me on this.

I ask for a recorded vote.

**Mr. Zimmer:** It's the role of the new independent advocate to determine his or her activities and priorities. I'm happy to leave that matter to the role of the advocate.

**Ms. Horwath:** I'll be supporting this motion. I think it's important that we have a children's bill of rights as well. When it came up in the hearings, I think it had overall support from people at committee as well as people sitting around in the galleries watching the proceedings. I actually agree and will be supporting it.

**The Chair:** I'll now put the question.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziatti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to the next motion, number 54. It's a government motion.

**Mr. Zimmer:** I move that subsection 15(2) of the bill be struck out.

The advocacy process should be free of political interference and free of the perception of political interference. This is the purpose of making the advocate an independent officer of the Legislature.

**Ms. MacLeod:** I fully support this and, in fact, have a notice of motion right after this resolution. I guess it will be ruled out of order. Because I support it so much, I put it in myself.

**Ms. Horwath:** I'm going to support the motion as well. After the issue came up in hearings, I did some research on it and determined that it's the same clause that already exists in the Ombudsman Act. The idea is that an advocate or an independent officer of the Legislature would not be doing any systemic reviews, obviously, without engaging the organization that's being reviewed. But it seems to me that if it's an act of goodwill by the government to strike this out, assuming, and I think with full knowledge, that the regular process of any independent advocate is to actually do that, is to go back and forth—we know that the Ombudsman, for example—and even the Auditor General—does that: goes back and forth to the ministries involved and clarifies issues and facts. I think any advocate worth their salt would be doing the same thing.

Keeping it under legislation as a gesture of goodwill from the government, I'm prepared to accept that, but it's with the full knowledge of everyone around this table that that's just the way of doing business for independent officers in terms of the efficacy of their job.

**The Chair:** I'll now put the question regarding the motion. Shall the government motion on page 54 carry? It's carried.

**Mr. Zimmer:** Unanimous.

**The Chair:** On page 55, it's really just a notice. It's not really a motion, so I'm going to rule it out of order.

**Ms. MacLeod:** I figured you'd do that.

**The Chair:** Yes. Shall section 15, as amended, carry? Carried.

We'll move on to page 56. It's an NDP motion.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Rights of children and youth

"15.1 Every child and youth described in section 13 has the right,

"(a) to be informed of the existence of the advocate;

"(b) to contact the advocate promptly and without delay;

"(c) to be provided with the means to contact the advocate promptly and without delay; and

"(d) to speak in private with and receive visits from the advocate and members of the advocate's staff."

Notwithstanding the government's next comment, which is going to be, "We've covered this in another amendment," if you look at their amendment on page 58, which we've already discussed a little bit today, this amendment is much more clear, it's much more specific and it sets out that every child has the right to be informed of the advocate. The government's motion doesn't do that.

To contact the advocate promptly and without delay—they do have that. To provide the means to contact the advocate—they don't have that. And to speak in private with and receive visits from the advocate—the government says "without unreasonable delay ... or reasonable private access." I don't think there's any reason why the advocate would not be able to have access to a child, so I don't accept that language in the government's motion. I urge the committee to consider passing my motion 56 because it does very clearly set out the rights of the child. If we are here to talk about children's rights and the advocate's assurances of children's rights, then we should be very clear with that language.

I urge members of the committee to support my motion.

**Mr. Zimmer:** The NDP critic anticipated my remarks. In the government's view, other motions—government motions—cover the point raised by the NDP critic.

**Ms. MacLeod:** It is the official opposition's point of view that no, this has not been addressed. That's why we have put a similar motion forward and that is why we will be supporting the NDP.

**The Chair:** Did the NDP ask for a recorded vote?

**Ms. Horwath:** Yes, a recorded vote.

Can I just say that one of the things that came up at the hearings—the one fellow who happened to be representing children often, and I can't remember his name off the top of my head; one of the lawyers—both children and lawyers for children said that it's not good enough to

say that the advocate has access to the child or that the child has the ability to contact the advocate, because the reality is that the control is in the service provider's hands. It's in, for example, the foster home or the group home—it's in their hands. If an incident occurs and we don't set out clearly what the rights of the child are in that regard, then the service provider could say, "Yes, you can call the advocate, but the phone won't be available until 3 o'clock on Friday afternoon"—and it's Monday.

I really do believe that putting this assurance in there for the child is of utmost importance. I'm sorry to delay, but it does need to be put on the record.

**The Chair:** I'll now put the question.

### Ayes

Horwath, MacLeod.

### Nays

Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** It does not carry.

On page 57 there's a PC motion.

**Ms. MacLeod:** It's the same motion.

**Ms. Horwath:** No, it's not really.

**Ms. MacLeod:** It isn't? Okay. I move that the bill be amended by adding the following subsection:

"Rights of children and youth

"15.1 Every child and youth described in section 13 has the right, promptly and without delay;

"(a) to be informed of the existence of the advocate;

"(b) to contact the advocate;

"(c) to be provided with the means to contact the advocate; and

"(d) to speak in private with and receive visits from the advocate and members of the advocate's staff."

I think in the absence of a positive right to entry by the advocate, this needs to be adopted. I do not think that amendment 58 by the government fully addresses the positive right to entry by the advocate, and therefore I ask members to support my resolution. I'd like a recorded vote.

**The Chair:** Further debate? I'll put the question.

### Ayes

Horwath, MacLeod.

### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

**Mr. Zimmer:** To my colleagues opposite, could we have about a two- or three-minute adjournment? A matter has come up with the advocate, and I think if we just talked about it for a minute, it will save a considerable

amount of time with respect to the discussion which will ensue on government motion 58. I think it's a wise use of the committee's time for a couple of minutes.

**The Chair:** Is that agreed? Unanimous consent? Okay. Five minutes or less? Thank you.

*The committee recessed from 1122 to 1125.*

**The Chair:** We'll call the meeting back to order. Mr. Zimmer has requested that Liberal motion 58—

*Interjection.*

**Ms. MacLeod:** Just to get it right.

*Interjection.*

**The Chair:** So the opposition and third party support holding down motion 58. What about the other ones that have to do with—

**Ms. Horwath:** Can I suggest, Mr. Chair, both motion 59 and motion 60 deal with subsection 16(3) of the bill, so we might as well wait to see what the government comes back with on 58. So we'll stand down 59 and 60, if that's consented to by the—

**Ms. MacLeod:** That's acceptable to me.

**Ms. Horwath:** Okay, that's great.

**The Chair:** What about 61? Will we do 61, then?

**Ms. MacLeod:** Let's just actually put 16 on hold.

**The Chair:** Okay. We'll leave those four motions for now.

**Ms. MacLeod:** And then let's start at 62.

**The Chair:** So we have an agreement to hold section 16 down for now. Okay. We'll move on then to section 17, and that starts on page 62. The first motion is an NDP motion.

**Ms. Horwath:** I move that section 17 of the bill be struck out and the following substituted:

"Confidentiality of personal information

"17. (1) The advocate and the advocate's staff shall not disclose personal information obtained in the course of acting under this act, except as permitted under subsection (2).

"Exceptions to confidentiality

(2) The advocate and the advocate's staff may disclose personal information obtained in the course of acting under this act,

"(a) to a children's aid society for the purpose of a report under section 72 of the Child and Family Services Act;

"(b) to the person responsible for a child or youth's care or other appropriate authority for the purpose of reporting a specific and serious risk of harm to any person;

"(c) where the person to whom the information relates has identified that information in particular and consented to its disclosure; or

"(d) where the information does not identify any person to whom the information relates and forms part of a report under section 19.

"Obligation to explain exception

"(3) The advocate or member of the advocate's staff who provides advocacy to a child or youth shall explain to him or her, in language suitable to the child or youth's level of understanding, the exceptions to confidentiality in subsection (2)."

Very briefly, this is a way to try to deal with some of the concerns that were raised around the complications that are in the government's confidentiality and privacy section of the bill.

**The Chair:** Any further debate? None? Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** So that motion does not carry.

I think the PC motion is the same, so we'll just vote on section 17. Shall section 17 carry? All those in favour? Opposed? Carried.

We'll move on to section 18, which begins with motion number 64. It's an NDP motion.

**Ms. Horwath:** I move that section 18 of the bill be struck out and the following substituted:

"Information

"18. The advocate may collect, use and disclose personal information, but shall take reasonable steps to protect the privacy of individuals while always acting in the best interests of children."

The government has decided to put extensive and lengthy language in the bill, the bill that's supposed to be about children, and children and youth are not going to easily wade through this section on protection of privacy and access to information. The idea of putting something in plain and simple language that's easily understood by children is, in my opinion, enough. It covers off the obligation of the advocate in terms of disclosing personal information, but the way this is written indicates that it's the advocate's responsibility and obligation, as always, to act in the best interests of children.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We'll move on to page 65. It's a PC motion.

**Ms. MacLeod:** I move that section 18 of the bill be struck out and the following substituted:

"Information

"18. The advocate may collect, use and disclose personal information while adhering to the principles established by the Freedom of Information and Protection of Privacy Act."

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Page 66, government motion.

**Mr. Zimmer:** I move that section 18 of the bill be amended by adding the following paragraph:

"8.1 The advocate may only disclose under subparagraph 8iii information that was received from a child or youth without the consent of the child or youth if the interest of the continued proper administration of justice in having the information disclosed outweighs the privacy interests of the child or youth in not having the information disclosed."

The rationale here is that the purpose of the amendment is to better protect the right to privacy of children and youth while supporting the administration of justice. The determination of whether the proper administration of justice outweighs the privacy interests will be made by the advocate.

1130

**Ms. Horwath:** I just need some clarification. What the amendment basically says is that we are giving the advocate the responsibility to determine, in the balance of probabilities, what's more important: Is it more important to make sure that the information comes out, or is the information not that important juxtaposed against the rights of the child or advocacy for the child?

**Mr. Zimmer:** That is correct. The discretion is to be exercised by the advocate.

**Ms. Horwath:** Okay. I support that amendment.

**The Chair:** All those in favour of the government motion? Opposed? That carries.

Shall section 18, as amended, carry? All those in favour? Opposed? Carried.

That's section 18. Now we're going to go to section 18.1. The next motion, 68, addresses section 18.1—

*Interjection.*

**The Chair:** I'm sorry. My apologies. Number 67 is the next motion. It's an NDP motion.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Records, etc.

"18.1(1) The advocate has the power to examine or copy any record or log book in the possession of an agency, service provider or facility for the purpose of performing his or her functions and powers under this act.

"Privilege

"(2) Nothing in this section abrogates solicitor-client privilege."

Again, it's just to clarify the access to records of the advocate, which came up in hearings.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry. Number 68 is a PC motion.

**Ms. Horwath:** It's the same as mine.

**Ms. MacLeod:** Yes, mine is exactly the same, just one word change, so I think we'll move right on to 69.

**The Chair:** So we'll withdraw number 68. Motion 69 is a PC motion.

**Ms. MacLeod:** I move that section 19 of the bill be amended by adding the following subsection:

"Other reports

"(2.1) The advocate may make any other reports to the Legislative Assembly that he or she considers expedient or advisable, and shall present them to the Speaker to lay before the assembly."

I think that's a common sense resolution. It just gives her an ability to write any report that she thinks is advisable.

Recorded vote.

**The Chair:** Further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

We'll move on to number 70. It's a government motion.

**Mr. Zimmer:** I move that subsection 19(4) of the bill be amended by striking out "at least 30 days".

Again, the advocacy process should be free of political interference and free of the perception of political interference. This is the purpose of making the advocate an independent officer of the Legislature.

**Ms. Horwath:** I support this motion. I think that the minister has done the right thing by taking out what I called in my second reading debate "the spin cycle." So I'm pleased to see it here. It's a good move. I support it.

**The Chair:** Any further debate? All those in favour? Opposed? Carried.

We'll move on to number 71. It's a PC motion.

**Ms. MacLeod:** I'm going to withdraw that motion.

**The Chair:** So 71 is withdrawn.

We'll move on to number 72, which is an NDP motion.

**Ms. Horwath:** I move that subsections 19(4) and (5) of the bill be struck out.

Again, I know that there's a requirement to provide reports, but—the government dealt with subsection 19(4), I believe. Isn't that the amendment we just did? They dealt with subsection 19(4), taking out the 30-days requirement.

**The Chair:** Yes.

**Ms. Horwath:** But for some reason they didn't take it out of subsection 19(5), and I don't understand why, so they're still saying that any reports that the advocate is indicating are appropriate to be presented still have to go through the spin cycle. They did half the job. They took away the spin cycle in subsection (4), but not in subsection (5). I don't understand the logic of that. I'm quite concerned about it. I don't know whether there's a reason why it's in subsection (5) and not in subsection (4). I'm asking that the government consider doing the whole job and taking the spin cycle out of both types of reports.

**Ms. MacLeod:** I just noticed that in government motion 73, it is.

**Ms. Horwath:** Oh, they do that?

**Ms. MacLeod:** Yes.

**Ms. Horwath:** I didn't have to be so mean.

**Ms. MacLeod:** They deserve it.

**Mr. Zimmer:** Thank you.

**Ms. Horwath:** Does that mean you're going to support my motion?

**Ms. MacLeod:** In any event, I'm comfortable supporting—

**The Chair:** Are you still moving your motion? Ms. Horwath is moving the motion on page 72.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry. The next motion is on page 73; it's a government motion.

**Mr. Zimmer:** I move that subsection 19(5) of the bill be amended by striking out "at least 30 days".

**Ms. Horwath:** I support that motion.

**Ms. MacLeod:** In the famous words of my mayor, Larry O'Brien, "I agree. I agree. I agree." I support it.

**The Chair:** I'll put the question on the motion. All those in favour? Opposed? That carries.

On page 74, it's an NDP motion.

**Ms. Horwath:** I move that section 19 of the bill be amended by adding the following subsection:

"Compliance

"(6) Where, in a report under this section, the advocate has made a recommendation that a ministry, agency or service provider carry out an action, the ministry, agency or service provider shall carry out the recommendation within the time frame set out in the report, unless the advocate agrees to another time frame."

We heard loud and clear in committee and the hearings that there is no obligation in the bill anywhere for anybody to act on any recommendation or report of the advocate. That's just inappropriate. We have to set out in the legislation a requirement that the recommendations be acted upon. That's what this does, and I urge the government to consider supporting it.

**The Chair:** Any further debate? Ms. Horwath, you asked for a recorded vote?

**Ms. Horwath:** Yes, please.

#### Ayes

Horwath.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Then the question is, shall section 19, as amended, carry? All those in favour? Opposed? Carried.

We'll move on then to the next motion, on page 75. It's an NDP motion.

**Ms. Horwath:** I move that section 20 of the bill be amended by adding the following subsections:

"Privilege

"(2) Subject to paragraph 8 of section 18, anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by the advocate is privileged as if the inquiry were proceedings in a court.

"Inadmissibility

"(3) Any information that is obtained by a service provider in contravention of the privilege is inadmissible in any court proceeding."

It's obvious what this does, so I'm not going to belabour it.

**The Chair:** Any further debate? None. You asked for a recorded vote?

**Ms. Horwath:** Yes, please.

#### Ayes

Horwath.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Shall section 20 carry? All those in favour? Opposed? Carried.

We'll move on to the NDP motion on page 76.

1140

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Offences and penalties

"20.1. Every person who,

"(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the advocate or any other person in the performance of his or her functions under this act; or

"(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the advocate or any other person under this act;

"(c) wilfully makes any false statement to or misleads or attempts to mislead the advocate or any other person in the exercise of his or her functions under this act; or

"(d) fails to inform a child of their right to access the advocate or prevents or fails to allow access to the advocate,

"is guilty of an offence and liable on conviction to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both."

This amendment is put in place to provide some kind of penalty for persons so that it clearly indicates the seriousness of not co-operating with the advocate or not facilitating a child's access to the advocate. We heard in the hearings that this was needed. Children, particularly young people themselves, when they got up to the table and they were talking to us about some of the concerns that they had—on more than one occasion a young person said that there needs to be a penalty. There needs to be a fine. There needs to be a reason, there needs to be something that forces or that requires, or there needs to be something that ensures that the adults who are so in control of children's lives are compelled to abide by the law in terms of the office of the independent advocate. I don't think the government has covered that off in the bill. I think it needs to be there—I don't think it needs to be there; the young people think it needs to be there. That's why I put this motion forward and I really would hope that we consider seriously adding penalties to this bill.

**Mr. Zimmer:** I'd just like to say that investigations, by their nature, are both independent and impartial. The advocacy is not impartial. Here the advocate aims to work co-operatively with the involved parties and use informal methods of dispute resolution or moral suasion. The inclusion of penalties and offences is more in line with investigative powers and not consistent with this approach.

**The Chair:** Further debate? We'll have a recorded vote on the NDP motion.

#### Ayes

Horwath.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That's not carried.

We'll move on to number 77, which is a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

**“Offences and penalties**

“20.1. Every person who without lawful justification or excuse, fails to co-operate with or obstructs the work of the advocate or the advocate’s staff is guilty of an offence and liable on conviction to a fine of not more than \$5,000.”

**Ms. Horwath:** I’m going to support this motion because I think it’s important to have a penalty section in the bill. Having said that, I received a similar response when I asked for language to be drafted of the \$5,000 amount and I didn’t think that fine was high enough to create the deterrent that we need to make people aware of how serious this issue is. So although I’m supporting it because my motion did not pass, and maybe with a smaller fine the government might support this one, the bottom line is that children were asking for this and we need to include it.

**The Chair:** Any further debate?

**Mr. Zimmer:** The argument that I made on NDP motion 76 I would make on PC motion 77.

**The Chair:** I’ll now put the question, on a recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We’ll move on to page 78. It’s a PC motion.

**Ms. MacLeod:** I move that the bill be amended by adding the following section:

“Advisory committee

“20.2 The Lieutenant Governor in Council shall establish an advisory committee composed of children, youth, families, and service providers to offer advice and critique the work of the advocate.”

I think it’s fairly consistent with what we’ve heard during the course of the deliberations. I also think it’s consistent with several motions that the opposition has put forward that have failed throughout this clause-by-clause experience.

**Mr. Zimmer:** The government does not support this motion. The essence here is that the independence of the child advocate could be compromised if the government forms a committee to scrutinize the work of the advocate. The whole thrust of this thing is to make sure that the advocate is independent and can pursue and do what’s in the best interests of the child.

**The Chair:** I’ll now put the question.

**Interjection:** A recorded vote.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Horwath, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We’ll move on to the next motion—

*Interjection.*

**The Chair:** I’m sorry.

**Ms. MacLeod:** One of my motions has been ruled out of order, and I respect that, but could I just make a comment about it? It is about the Ombudsman Act. I believe that section 14 of the Ombudsman Act should be amended by adding:

“Children and families

“(1.1) For greater certainty, children and their families who are receiving services from the government or a service provider”—

**The Chair:** Are you speaking to motion 79?

**Ms. MacLeod:** Yes. I’m actually just making a comment; I’m not speaking to it. I’m just trying to make a comment to the government that I believe the natural step after this bill is passed is actually to amend section 14 of the Ombudsman Act.

**The Chair:** We’ll get to that in a moment, but first of all, I’ve just got a couple of questions with regards to some of the other sections of the act here.

*Interjection.*

**The Chair:** Let’s deal with section 21. Shall section 21 carry? All those in favour? Opposed? Carried.

Shall section 22 carry? All those in favour? Opposed? Carried.

Shall section 23 carry? All those in favour? Opposed? Carried.

Now we go to motion 79. I’m going to rule that out of order.

We’ll move on to section 24. Shall—

*Interjection.*

**The Chair:** We’ll go back to that in a second, but could we just do section 24? Shall section 24 carry? Carried.

Shall section 25 carry? All those in favour? Opposed? Carried.

Now we’re going to go back to motions 58 to 61.

**Mr. Zimmer:** Chair, may we have a few minutes’ adjournment? I make it about 13 minutes to 12. I just want my colleagues opposite to have a chance to—

*Interjection.*

**The Chair:** Okay. Let’s see if we can perhaps—we’ve got just over 10 minutes. We’re dealing with government motion 58?

**Mr. Zimmer:** Yes. Hold on a second.

*Interjection.*

**Mr. Zimmer:** With respect to government motion 58, I’d like to amend government motion 58. The amendment would be at subsection (3), where it says “Same.” I’ll read it in carefully:

“(3) Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advo-

cate with private access to children in care or reasonable private access to young persons in custody who wish to meet with the advocate.”

Just to point out the changes there, in the second sentence, we've struck out the word “a,” so it just reads “children”; we've changed “child” to “children.” And at the end of the sentence, where it now reads “private access to,” we've struck out “a” and changed “young person” to “young persons.” Those are the changes.

1150

**Ms. Horwath:** I appreciate the changes. Can I just ask through you, Mr. Chair, is that to cover off the idea that it's not necessarily in response to a complaint from a particular child but that by changing to “children” and “young persons” the government is indicating that in the development of a review of a particular agency or report, they can actually enter these premises? Is that the purpose?

**Mr. Zimmer:** I'll ask ministry counsel to respond to that.

**Ms. Crandall:** The concern was expressed that the subsection as worded only gave the right to meet one child. We proposed the amendment in order that the advocate could meet with more than one child or youth, which would give the opportunity to speak to children and youth in the facility.

**Ms. Horwath:** Okay. Can I just ask through you, Mr. Chair, what is meant by “unreasonable” and “reasonable” in the context of subsection (3)? I don't understand what the words “unreasonable delay” and “reasonable”—

**The Chair:** I think Mr. Zimmer can answer that.

**Ms. Horwath:** That's fine. I'm just curious.

**Mr. Zimmer:** I'll take a stab, and then I'll turn it over to ministry counsel. In the context of legislation and in common law and in legal circles and so on, “reasonable” and “unreasonable” are terms that a judge would ultimately sort out if someone argued that you're being unreasonable or not being reasonable in something. Having said that, I'll ask ministry counsel to expand.

**Ms. Horwath:** I would appreciate it.

**Ms. Crandall:** There is discretion on the advocate in this instance, but what this section mirrors is the rights of the child contained in the CFSA and the MCSA. The CFSA, in the rights of the child section, gives the child the right to private access, and the MCSA gives young persons in custody the right to reasonable private access. What we've done there is deliberately mirror the rights of the child that are already contained in legislation.

**Ms. Horwath:** I appreciate it, and I appreciate the attempt at amending the section. I am still concerned that there is no obvious right or ability for the child advocate to enter a premises in conducting a review. I don't know whether it's implied in this. Can I just ask, does the government feel it's implied that entering premises and speaking to children can be done for the purposes of a review, or just on the complaint of a child?

**Mr. Zimmer:** I apologize, Ms. Horwath. I missed you—

**Ms. Horwath:** I'm just concerned that the legislation is still silent on the opportunity or ability of the advocate

to enter for the purposes of conducting a review, as opposed to responding to a request from a child to see an advocate.

**Mr. Zimmer:** Let me make three points for the record. First, it's the advocate who will have the discretion to determine when a delay is unreasonable. That determination will be made by the advocate on the circumstances of the particular case. Second, and I want to be very clear about this, the advocate currently enters service provider facilities to conduct system reviews. This practice will continue under the legislation. The third point I want to put on the record is that the advocate has a statutory right to conduct system reviews and look into service systems, and the service providers have an obligation to co-operate. If issues arise in practice, there is an opportunity to bring regulations forward.

**Ms. Horwath:** I appreciate that, Mr. Chair. Can I just ask, through you, where in the legislation the advocate has the right, in the process of conducting a review, to access a place, a location, without unreasonable delay or with reasonable privacy. I don't see it, and I'm asking legislative counsel to show me the part in this legislation where that right is articulated.

**Ms. Crandall:** I think the right is articulated in subsection 16(3): “Every agency or service provider, as the case may be,” has to provide the advocate with private access or reasonably private access. So I think there is the obligation on service providers there that if a child or youth wishes to speak to the service provider or the child, then they have to be allowed in.

**Ms. Horwath:** Okay, I'm still concerned, so I'm going to have to vote against this. I don't think it includes the issue of the advocate being given the opportunity to access a premises, a place, a location, a facility for the purposes of a review. Maybe it's a review of documents, a review of conditions, a review of health standards, a review of the cupboards to see if there's enough food for the children; it's not necessarily to speak to the child. I don't think it's articulated clearly in this legislation and I think it needs to be. Because it's absent, I'm going to have to vote against it. I don't think it covers off the areas that need to be covered off.

**Ms. MacLeod:** I too will be voting against it, based on my previous concerns. I do not feel they have been addressed in this most recent draft and amendment. Therefore, I will be voting against it.

**The Chair:** I'll put the question with regard to the government motion on page 58. All those in favour?

I've just been advised by the committee clerk, could you read the motion into the record one more time?

**Mr. Zimmer:** The amended?

**The Chair:** Yes, the amended motion.

**Mr. Zimmer:** I move that subsection 16(2) of the bill be struck out and the following substituted:

“(2) An agency or service provider, as the case may be, shall afford a child or youth who wishes to contact the advocate with the means to do so privately and without delay.

“(3) Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advocate with private access to children in care or reasonable private access to young persons in custody who wish to meet with the advocate.”

**The Chair:** Thank you. A recorded vote has been asked for.

#### Ayes

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

#### Nays

Horwath, MacLeod.

**The Chair:** That motion carries.

Motion 59, an NDP motion.

**Ms. Horwath:** I move that section 16 of the bill be amended by adding the following subsection:

“Same

“(3) Any agency, service provider, facility, teacher, social worker, peace officer or foster parent providing services described in section 13 shall ensure that a child or youth who wishes to contact the advocate can do so privately and without delay.”

This is just a change of onus on those providers to tell them they have to do it.

**Ms. MacLeod:** I support this motion. Although there is one word different in mine and you may want to proceed with it, I’m going to withdraw 60 and fully support 59 because they are essentially the same.

**The Chair:** Okay, so you’ve withdrawn 60 but support 59.

A recorded vote has been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Number 60 has been withdrawn; 61 is a PC motion.

**Ms. MacLeod:** I move that section 16 of the bill be amended by adding the following subsection:

“Further obligation

“(4) Every agency or service provider shall inform children, young persons, parents and guardians of the existence of the office at the time of admission to any out of home placement and at each plan of care meeting, and ensure that all access and communications with the advocate are private and unfettered.”

Mr. Chair, in the absence of a very strongly worded 58 resolution, I believe this needs to be carried and urge my colleagues to support it.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Shall section 16, as amended, carry? All those in favour? Opposed? That carries.

Shall the title of the bill carry? All those in favour? Opposed? That carries.

Shall Bill 165, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

I want to thank everybody present today, including staff, for their help.

This meeting is adjourned.

*The committee adjourned at 1201.*

## CONTENTS

Wednesday 3 May 2007

Subcommittee report.....	JP-1227
Provincial Advocate for Children and Youth Act, 2007, <i>Mrs. Chambers /</i> <i>Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes,</i> <i>projet de loi 165, M<sup>me</sup> Chambers .....</i>	JP-1227

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JP-43

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Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 9 May 2007

# Journal des débats (Hansard)

Mercredi 9 mai 2007

**Standing committee on  
justice policy**

Safeguarding and Sustaining  
Ontario's Water Act, 2007

**Comité permanent  
de la justice**

Loi de 2007 sur la sauvegarde et  
la durabilité des eaux de l'Ontario



Chair: Lorenzo Berardinetti  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 9 May 2007

Mercredi 9 mai 2007

*The committee met at 1005 in room 1.*SAFEGUARDING AND SUSTAINING  
ONTARIO'S WATER ACT, 2007LOI DE 2007 SUR LA SAUVEGARDE ET LA  
DURABILITÉ DES EAUX DE L'ONTARIO

Consideration of Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act / Projet de loi 198, Loi visant à modifier la Loi sur les ressources en eau de l'Ontario afin d'assurer la sauvegarde et la durabilité des eaux de l'Ontario, à apporter des modifications connexes à la Loi de 2002 sur la salubrité de l'eau potable et à abroger la Loi sur le contrôle des transferts d'eau.

**The Vice-Chair (Mrs. Maria Van Bommel):** I'd like to call this meeting to order, please. Good morning, and welcome to everyone. This is a meeting of the standing committee on justice policy. The order of business is Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act.

Pursuant to the time allocation order of the House dated Tuesday, April 24, 2007, clause-by-clause consideration of the bill will be held on Wednesday, May 16, 2007. The committee is authorized to sit in the morning and after routine proceedings until completion. The deadline for amendments is noon on Monday, May 14. Motions will not be accepted after that time.

Now, unless there is further business from any of the members, I'd like to proceed with our public hearings.

## ONTARIO WATERPOWER ASSOCIATION

**The Vice-Chair:** I'd like to call our first witness, Paul Norris, for the Ontario Waterpower Association.

**Mr. Paul Norris:** Good morning.

**The Vice-Chair:** Good morning, Mr. Norris, and welcome. You have 10 minutes to make your presentation. You can use that entire 10 minutes for the presentation. If there is time left over out of that 10 minutes, there is an opportunity for members of the committee to ask questions and make comments. If you would state your name for the record and then proceed.

**Mr. Norris:** I thank you and committee members for the opportunity to speak to this proposed legislation. My name is Paul Norris. I am president of the Ontario Waterpower Association. You have a blue package in front of you from the Ontario Waterpower Association and my speaking notes are therein. We are a non-governmental organization representing the production and development of the province's primary source of renewable energy. I'm pleased to have the privilege today to provide input to your deliberations on Bill 198, the Safeguarding and Sustaining Ontario's Water Act, 2007.

The Ontario Waterpower Association has been actively involved in contributing to the modernization of the province's legislative, regulatory and policy framework for water resource management over the past five years. Specific to a key element of this legislative proposal, I had the pleasure of participating on the Great Lakes Charter Annex advisory panel that served to inform Ontario's approach to the negotiations with the Great Lakes states and the province of Quebec.

With respect to the implementation of the negotiated position through this proposal, I think it's important that the committee recognize and appreciate that the position was arrived at through a complex process of bilateral, multilateral and internal discussions and dialogue. Members on Ontario's advisory panel brought an array of interests, experience and expertise to the negotiation process that resulted in a mutually acceptable consensus for Ontario's negotiators to consider. In my view, the legislation should respect the outcome of that process, and any recommended changes should carefully consider the wider implications for the negotiated agreement, both in Ontario and with respect to the approaches of other jurisdictions.

Of specific interest to our industry, however, are the proposed improvements that go beyond the immediate scope of the implementation of the Great Lakes Charter Annex. In my view, the opportunity provided by the intent to "modernize" the Ontario Water Resources Act must finally address the equivalence in legislation governing water resource management for water power production.

In May 2002, exactly five years ago, the government of Ontario amended the Lakes and Rivers Improvement Act to add a new provision with respect to water resource management. This new requirement, under section 23 of the act, provides the Minister of Natural Resources with

the authority to order owners and operators of water power facilities to develop and comply with water management plans.

I'd like to point out two important facts related to the introduction of this new requirement. The first is that the province chose the Lakes and Rivers Improvement Act as the legislative vehicle by which water resource management for dam owners would be regulated. There were other options available; for example, the Ontario Water Resources Act. The second is that the province has chosen to order the preparation of these water management plans only for rivers that produce hydroelectricity.

Over the past five years, the province and the industry have collectively invested more than \$30 million in implementing water management planning, with investment in new data collection, monitoring, evaluation and assessment ongoing over the next decade or more in preparation for the next iteration of planning.

In 2003, almost a year after the introduction of water management planning, the province posted on the environmental registry proposed amendments to regulations under the Ontario Water Resources Act and improvements to the permit-to-take-water program. At the time, this proposal was directly linked to the government's clean water strategy.

In response to that posting and to subsequent related policy and program initiatives, our association has consistently observed and maintained that the introduction of water management planning under the Lakes and Rivers Improvement Act had been designed to achieve substantially equivalent objectives to those being proposed under the Ontario Water Resources Act.

1010

Despite the apparent recognition of the unique position of our industry vis-à-vis regulatory equivalence, we have yet to see any targeted policy progress to address this issue. As a result, we are now dealing with permitting provisions related to water resource management issued under two separate pieces of legislation, with similar or identical requirements administered by two separate ministries.

I'd like to give you a case example of a small water power facility in northern Ontario. The provisions of the permit to take water for the facility, posted on the environmental registry in 2005, are as follows: a minimum outflow of eight cubic metres per second shall be maintained at all times; outflows shall be steady or rising between April 15 and June 15; no peaking of flows shall occur between April 15 and June 15.

Now let me read you the provisions for the operating plan for the facility approved under the water management planning process, posted on the environmental registry in 2004: outflows to be equal to or greater than eight cubic metres per second at all times; outflows will be steady or rising April 15 to June 15; no peaking of flows will occur between April 15 and June 15.

I want to be clear that the industry has not suggested that we not be required to address the province's water policy objectives, rather that we substantially do through

a considered decision by the government to subject water power alone to the provisions of water management planning. It is clear that these provisions can and do meet provincial water policy objectives.

This brings me back to the current bill. The province has clearly recognized in its communication of the proposed legislation and accompanying regulatory and policy framework the regulatory equivalence for water power facilities, most specifically in the design of the conservation charge and the appropriate proposed exemption of water power. As stated in the background material accompanying the introduction of the bill: "Hydropower production is largely an in-stream use of water that has minimal impact on water quantity and quality. In addition, many hydropower producers already pay a water rental charge (approximately \$130 million annually) under the Electricity Act ... to the Ministry of Finance."

As such, and as stated in our February 2007 EBR submission to the posting of the proposed amendments to implement the charter annex agreement, it is recommended that the province take this limited window of opportunity to incorporate the following into section 34 of the act, the section addressing the requirement for a permit to take water. It is specifically proposed that a subsection be added to the existing exemption section as follows. With respect to regulatory equivalence:

"(6) Subsection (3)"—that is, the section requiring a permit to take water—"does not apply to the taking of water with infrastructure regulated pursuant to section 23.1 of the Lakes and Rivers Improvement Act or an equivalent."

Alternatively, a regulation pursuant to section 76(a) of the act that recognizes this overlap and duplication and is made effective before the new legislation is enacted could be used to achieve that same objective.

Madam Chair and committee members, made-in-Ontario water power has a critical role to play in addressing our electricity and climate change challenges. We have the resource, expertise and interest to increase the production of water power by more than 50% and position the province as a leader in renewable energy, but we need a rational and rationalized regulatory framework to achieve that objective. I urge you to take this opportunity to make the necessary changes within the Ontario Water Resources Act.

Thank you. I'd be pleased to entertain questions.

**The Vice-Chair:** Thank you very much, Mr. Norris. We have three minutes. That is one minute for each party. We will start with the official opposition.

**Mr. Norm Miller (Parry Sound—Muskoka):** Thank you, Mr. Norris, for your presentation. Certainly, on the surface of it, it looks like you've pointed out where there is duplication and red tape, and your suggestion looks like it makes sense to me, for the amendment that you're recommending. At the beginning of your presentation, you talked about carefully considering the wider implications. Could you expand on that point?

**Mr. Norris:** Sure. I'm not about to presume what you're going to hear from other people, but as a par-

ticipant in the advisory panel process that was a long and complex process, I would strongly encourage the committee and committee members to assess the relationship between what was an agreed-upon document coming out of that process and what's reflected in the legislation. I think it's critical that we all understand that the position established was a position that was not only negotiated between Ontario and other jurisdictions but also subject to a complex set of discussions within Ontario.

**Mr. Miller:** And it's your feeling that the legislation does reflect the agreement?

**Mr. Norris:** I think that it certainly meets the spirit and intent of the negotiations.

**The Vice-Chair:** Mr. Tabuns, please.

**Mr. Peter Tabuns (Toronto-Danforth):** Could you tell me again what the negative impact will be for hydro power development in Ontario if these amendments that you've proposed don't go through?

**Mr. Norris:** What we're suffering with now is what I call the next wave of water legislation. We happen to be in an interesting position in public policy, at the nexus of two pretty critical issues: energy and water. I think that, while understanding that the province has an obligation and an interest in pursuing the modernization of its water legislation, we happen to be a user of water with respect to the production of electricity. The implications are that we're suffering overlap and duplication. In fact, the prospect of being subject to compliance regimes under different legislation for the exact same requirements is not helpful for an industry that's trying to meet the province's targets of doubling renewables by 2025.

**The Vice-Chair:** Thank you very much. Mr. Leal of the governing party.

**Mr. Jeff Leal (Peterborough):** Paul, I know that in your introduction you forgot to say that you're headquartered in the great city of Peterborough.

**Mr. Norris:** The great city of Peterborough, absolutely, and I'll be happy to return there later this afternoon.

**Mr. Leal:** Paul, thank you for your organization's great work in the area of renewables, particularly for hydro generation over the last three years, in meeting some of our policy objectives. My question is fairly short: You would appreciate it if we could make these two small amendments and then you'd be supportive of Bill 198?

**Mr. Norris:** That's correct.

**The Vice-Chair:** Thank you, Mr. Norris, for attending here today.

## CANADIAN BOTTLED WATER ASSOCIATION

**The Vice-Chair:** I'd like to call on the Canadian Bottled Water Association: Elizabeth Griswold.

Good morning and welcome to the committee. I'd like to point out that you have 10 minutes to make your presentation. If you use up the entire 10 minutes, then there will be no opportunity for questions and comments from the members of the committee. If you would

introduce yourselves for the record and then proceed, please.

**Ms. Elizabeth Griswold:** I'm Elizabeth Griswold with the Canadian Bottled Water Association. Joining me is Tim Bermingham from the law firm of Blake, Cassels and Graydon, and to my right is Steve Usher with the engineering firm of Gartner Lee.

**The Vice-Chair:** Thank you. Please proceed.

**Ms. Griswold:** Good morning, Madam Vice-Chair and members of the committee. As I stated, my name is Elizabeth Griswold and I am the executive director of the Canadian Bottled Water Association. Our members account for 85% of bottled water sold in Canada. We are the voice of the industry. I want to thank the committee for agreeing to listen to us today. For the last several years, I have also been a member of the Ontario Great Lakes Charter Annex advisory panel.

This is a 500 millilitre bottle of Ontario water. The company that produced this took 515 millilitre of water to do so. Our industry is highly efficient and wastes almost no water. A case of 24 bottles of this water is sold at large retail outlets for 10 to 12 cents per bottle. I would invite any member of this committee to look at your weekend flyers to confirm the pricing of this product. For those of you who think we get our product for free, I would invite you to tour this plant, built on land owned by this company, where millions of dollars have been invested, and talk to some of the 350 employees. Most of our plants, like this bottling plant, are built and located in rural areas.

1020

The Canadian Bottled Water Association has long said that we support measures to protect the quality and quantity of Ontario's water supply. Without appropriate protection of the quality and quantity, our members would be out of business.

Having said that, I wish to table our concerns about this bill. Let me say for the record that we are aggrieved that this bill has been posted on the Environmental Bill of Rights for just 30 days; usually EBR postings are longer.

We were disappointed that the government moved time allocation for this bill, stifling debate. We're shocked that our appearance today is limited to 10 minutes to discuss legislation fundamental to our industry. We were not consulted by the Ministry of the Environment as they developed the \$3.71 fee level.

You should know, according to the Ministry of the Environment's own data, that all of the permitted source bottled water companies in Ontario account for two tenths of 1% of water taken in this province. This means that every year our industry takes as much water out of the ground as 10 golf courses; there are 700 golf courses in Ontario. It takes 7,800 litres of water to produce four tires, over 147,000 litres to produce a car and over 236,000 litres of water to produce a tonne of steel. It takes only 1.03 litres of water to produce a litre of water.

We do not support the framework for the development of the water-taking charges as laid out in this bill. We believe that the "consumptive uses" definition that the

bill relies upon is faulty and based on something other than good science. To say that, once water taken is moved out of its originating watershed, it becomes a consumptive use, is—respectfully speaking—woefully inadequate for the development of public policy and legislation. Every time you water your lawn and garden, some 80% of that water transpires, or evaporates, and leaves the watershed that you took it from, in the form of cloud movement.

For a bill that is supposed to be about safeguarding and sustaining Ontario's water, it seems that little to no regard was given to the quality of the water that may remain in the watershed but is returned in a much degraded condition. Why wouldn't those takers be asked to pay as much as or more than the water bottlers, whose usage represents one of the cleanest uses for water?

Instead, Bill 198 requires those of us who make water available for human consumption to pay the most and pay first. We believe that if water charges are here to stay, all users should pay equally. Our legal counsel advises us that the province can only implement a regulatory charge to defray its costs associated with managing water resources; their opinion is included in our submission for your review. In order for this charge to be at all credible, the government must table, in a manner understandable by the public, its water management costs. According to the Ministry of the Environment's own consultation document, industrial and commercial users account for 2% of water-takings in Ontario. Therefore, the total revenue collected from these charges must not exceed 2% of the province's water management costs, and the bottled water industry should pay no more than two tenths of 1% of those costs.

We believe that this bill has more to do with politics than environmental science or stewardship. The timing and handling of the bill through the legislative process does not invite proper scrutiny or analysis. We realize that the water-taking charges will be developed in regulation, away from the public and media scrutiny of the legislation that is introduced, amended and passed in plain sight.

We also ask members to consider the obvious: When a government implements a new fee, tax or charge, presumably to encourage the conservation and sustainability of Ontario's water, but exempts 98% of the takers of water, bases its policies on a flawed concept such as "consumptive use," has no regard for water quality but financially penalizes Ontario companies if water crosses a line on a map, we submit that water sustainability and protection will actually be set back in this province.

Recognizing these issues, we encourage the members of the committee and the Legislature to delay the passage of this bill until more properly developed criteria and a much more credible framework for the new charges can be developed. This bill, as written, is inadequate. Done properly, Ontario can have legislation that protects Ontario's water and sets out a much better framework for regulation that the CBWA, with proper consultation, could support.

I thank the members for their time.

**The Vice-Chair:** Thank you very much, Ms. Griswold. We have one minute left, so I would say that I will allow one question in that minute. By rotation, that goes to the third party, so, Mr. Prue, if you would, please.

**Mr. Michael Prue (Beaches—East York):** My goodness. I just sat down so I hardly heard. I apologize. Mr. Tabuns had to leave.

You talked about delay; you want it delayed. What time frame are you looking at?

**Ms. Griswold:** The time frame that we would look at—delayed long enough so that we can see both the regulation for the water charges and the legislation at the same time.

**Mr. Prue:** You're asking the government, then, to delay the passage of this bill and the regulations until following the election, some time next year?

**Ms. Griswold:** I don't know whether—I would assume that that would be the time frame because I don't see where the regulation would be able to be developed in time with the recess coming up soon. If we were to rush this legislation because of an election, I think the long-term consequences would be severe. It would be fairly severe for us to push legislation through that, long term, would not necessarily be in the best interests of the protection of our groundwater resources.

**The Vice-Chair:** Thank you, Ms. Griswold.

#### POLLUTION PROBE, OTTAWA

**The Vice-Chair:** I would now like to call upon Pollution Probe, Ottawa: Rick Findlay, director of the water program.

Good morning, Mr. Findlay, and welcome to the committee. You have 10 minutes to make your presentation. You can use up the entire 10 minutes for the presentation. If you use up less than that, then there is an opportunity for comments and questions by the committee members. If you would, first identify yourself for the record and then proceed with your presentation.

**Mr. Rick Findlay:** Good morning. My name is Richard Findlay and I'm director of the water program with Pollution Probe.

Pollution Probe has been around since 1969. It was established across the road at the University of Toronto at that time. We are a non-profit organization, with a donor list of approximately 6,000 people who support our work.

Pollution Probe has been involved with work on the Great Lakes for decades. We have a long track record of promoting protection of the Great Lakes for future generations.

Pollution Probe has been very involved with the development of the Great Lakes annex agreement that has been referred to already this morning. We are members of the annex advisory panel that continues to be involved with the development of the agreement and its implementation, and we're supportive of the next step, which is the requirement for legislation that would enable the agreement to be implemented.

1030

I'm not a lawyer. I don't really have the capacity to map between the agreement and the proposed implementing legislation, but I do understand, having spoken with lawyers, that this act will enable the implementation of the agreement, and Pollution Probe strongly supports that. We're not in a position to second-guess the lawyers and the drafters who've carefully written the enabling provisions, but we have some suggestions for additions to the bill that would facilitate implementation of the agreement and may help ensure that it actually does get implemented and fully meets the spirit and the requirements of the agreement itself.

I'd like to make a couple of practical suggestions for consideration. The first is that I think the bill should require a provision for some kind of interpretive manual or implementation manual, something that in plain language helps people like myself, and the general public as well, in understanding the act and the agreement around which it's based.

If shortcomings emerge at a later date, this ongoing procedural manual would help ensure that the regulators pick up on it and take appropriate action down the road. For example, in areas like data sharing, it would be very important to have some reference for the requirement for data to be gathered and shared, not only among provincial departments but with the general public. Questions regarding cumulative water-takings will continue to emerge over time, and we need some kind of flexible implementation step to be able to address these things. Conservation plans would be greatly facilitated by this iterative process. Making use of existing water-takings first, for example, would be an important step. Additional levels of detail would be helpful as time goes on.

Another important requirement is to be able to make the case for the resources necessary to implement this legislation over time, and the Environmental Commissioner has recently noted the chronic underfunding of the ministries responsible for managing and cleaning up the Great Lakes, the Ministries of the Environment and Natural Resources in particular. An interpretive manual would certainly be very helpful in making the case that adequate resourcing is required for the ongoing process of implementing this legislation and making sure that the lakes are protected for the future. This adaptive path coming out of the process, a path of regulatory adjustment, will likely be needed. I think a step like this would be very helpful.

I would like to strongly support the wording in the act that talks about the precautionary principle. That's an important concept—the idea that we shouldn't wait for complete scientific certainty to be had before we take action.

Finally, I wanted to also note, in the preparation of some of our comments and the submission, which has been provided in writing to the clerk, my support for our collaboration with the Canadian Environmental Law Association, Sierra Legal Defence Fund and the work of Sarah Miller. You'll be hearing from Sarah as well this morning, so I'll stop there.

**The Vice-Chair:** Thank you very much, Mr. Findlay. We have five minutes left, which is about one minute and 45 seconds per party. If the government would like to start, Mr. Leal, please.

**Mr. Leal:** Mr. Findlay, I really don't have a question. I just want to thank you for making your presentation this morning. Rest assured your comments will be taken as we get down the road and through amendments on this bill.

**The Vice-Chair:** The official opposition, Ms. Scott?

**Ms. Laurie Scott (Haliburton–Victoria–Brock):** Thank you very much for appearing before us here today. We do have concerns that this bill is being rushed through with the time allocation and not enough public consultation, because it is complex and it's hard to understand.

You made reference in some of your comments to an interpretive model. We've heard from some of the stakeholders that there needs to be more time so that there can be more public input so we can get the framework right. Do you have any comment that this is being pushed through too quickly and what you would like to see—you mentioned an interpretive model, but more consultation—just so we can hear and there is enough time to absorb what's in this legislation and to get proper feedback so it does get to be correct?

**Mr. Findlay:** I'd actually come down on the side of implementing the legislation as soon as possible, but making sure that there is a regulatory process afterwards that picks up on some of these suggestions. I would love to see the legislation amended to include this requirement for an ongoing process.

On the point of public consultation, I think it's been pretty adequately consulted on so far. The annex agreement process has been very carefully done and my support for that is based on my experience with that process. So I think it's time to move it ahead.

**Ms. Scott:** We heard from the Canadian Bottled Water Association, some of their concerns, which I know you're not really addressing, I guess, at Pollution Probe.

**Mr. Findlay:** Right, I'm not.

**Ms. Scott:** You're just mainly concentrating on the Great Lakes-St. Lawrence agreement.

**Mr. Findlay:** Yes, that's correct.

**Ms. Scott:** And you were on the committee. On the other side of the border, in the United States, do they have a different process of getting input from all the stakeholders, an ongoing—

**Mr. Findlay:** I think it's really variable across each of the jurisdictions, and there are eight states in the United States that are all involved with bringing the agreement into their respective legislative processes to ensure its implementation as well. Ontario is fairly early along and I think a good leader in that, in working hard to bring it in soon. I can't tell you exactly where each of the eight jurisdictions is at with respect to engagement and process. It's quite variable, depending on the various needs.

**The Vice-Chair:** Mr. Prue.

**Mr. Prue:** Just in terms of the previous deputant, the previous deputant asked that the matter be put off, obviously, until after the election and maybe into next year. You want immediate application. There's a dichotomy of opinion here. Can you tell me why it's important on your side that it be done right away?

**Mr. Findlay:** I think we have a great opportunity to bring this in. The legislation, as I understand it, that has been written will enable the implementation of the agreement and I think that's the most important step to be taken right now. I'd look forward to regulatory procedures that will allow more of an iterative process to enable the public to understand how that's going to happen in more lay terms. I think that's one of the difficulties, and Mr. Norris kind of alluded to that a little bit, that there's a faith being taken between the agreement and the legislation and the understanding that it'll do it. I think it probably will, but it would be probably facilitated by some of the suggestions that I have made.

**Mr. Prue:** As an MPP, and usually opposition MPPs state this, we are much happier to see the law contained within the bill itself as opposed to regulation, because the regulation is done by the minister without consultation with the Legislature and virtually no input from that point on. Do you have any trepidation whatsoever that the minister, or a subsequent minister, will be able to just simply pass any regulation without coming back to you or to the Legislature?

**Mr. Findlay:** I don't think I could really comment on that. I think there's an opportunity to move this ahead right now, and I think we should take it.

**The Vice-Chair:** Thank you, Mr. Findlay, for appearing before the committee.

#### SIERRA CLUB OF CANADA, ONTARIO CHAPTER

**The Vice-Chair:** I would like to call on the Sierra Club of Canada, Ontario chapter, Tim Morris. Good morning, Mr. Morris, and welcome.

**Mr. Tim Morris:** Good morning, and thank you.

**The Vice-Chair:** You have 10 minutes to make your presentation. If you use up the entire 10 minutes, there will be no opportunity for members of the committee to make comment or ask questions. If you would start by identifying yourself for the record, and then just proceed with your presentation.

**Mr. Morris:** My name is Tim Morris. I am the national water campaigner for Sierra Club of Canada. We're a national non-profit organization. We have five chapters across the country and over 10,000 members. Protection of our freshwater resources has always been a high priority for the club, including the Great Lakes, and it's a great pleasure to have the opportunity to present to you on this important bill.

1040

I just want to spend a couple of minutes on the context and then move into some specific suggestions for amendments in the legislation.

It's true that the Great Lakes contain 20% of the world's total fresh surface water supply, and this is a statistic that's often used. But what we have to realize is that most of this amount is non-renewable. The International Joint Commission estimates that less than 1% of the total amount in the Great Lakes is renewed annually from precipitation and in-flow from surface and groundwater. What this means is that all uses of Great Lakes water, both human and environmental, must stay within the 1% to ensure we don't start mining or drawing down our Great Lakes. We know that climate change is predicted to reduce this 1% further through higher evaporation rates, and it may already be having an impact. Just yesterday, I was reading a news report that said that Lake Superior was at its lowest point in 80 years, and Lake Huron has been close to record lows for the past six years.

We've known for the last few decades that other countries and regions would like access to what they see as an infinite supply, and this pressure is increasing. The threat of diversions out of the basin, which was highlighted by a proposal by Nova Group in 1998 to ship water to Asia, prompted the Great Lakes jurisdictions—Ontario, Quebec, the eight Great Lakes states—to enter negotiations to address this threat. The result, after four years of hard negotiations between the governments, is the Great Lakes-St. Lawrence River Basin Water Resources Agreement—quite a mouthful of an agreement. In a nutshell, this regional agreement prohibits long-range diversions and exports and establishes a water management framework to regulate water use within the basin.

This brings me to Bill 198, because this represents Ontario's commitment to implement the agreement. It's worth noting that in the United States, there's quite a tougher road to go down. Even before it can be implemented, this agreement needs approval by Congress in each individual jurisdiction and then US federal congressional approval. Currently, only Minnesota has secured congressional approval.

Really, what we see here is a great opportunity for Ontario to establish itself as a leader in the basin. It can do this by tightening up loopholes, which we all know exist in the general framework of the agreement, through its domestic law. In fact, article 202 of the agreement even states that the standards within it are just minimum standards that parties may go beyond. Unfortunately, when reading the legislation, we feel that not all these loopholes have been tightened up and we're disappointed that Ontario is probably missing an excellent opportunity to establish itself as a leader in the basin. We also feel it's not currently effectively protecting Ontario's environment, its economy or its citizens.

In our opinion, the biggest loopholes relate to intra-basin transfers. This is set out in subsection 34.6(2). Intra-basin transfers involve the diversion of water from one Great Lakes watershed to another. They're not to be confused with very similar-sounding inter-basin diversions, where water is diverted out of the entire basin.

The government has stated that intra-basin transfers are prohibited except for very strict exceptions. However,

when we look at the legislation, we see the current exceptions as far too broad and ill-defined to justify the claim that they are in fact strict. Why are we concerned about these exceptions? Ontario doesn't have enough understanding of our water resources at this point to know what the impacts of diversions across Great Lakes watersheds could be. We do know that water levels of the upper Great Lakes are predicted to decline further outside their natural range as a result of climate change. We expect continued urban growth in southern Ontario, placing greater demands on Great Lakes water.

As well, Ontario has access to four out of the five Great Lakes, so out of all the jurisdictions in the basin, it has the greatest potential for intra-basin transfers in the region, a fact that isn't lost on the other jurisdictions. We already know of five municipalities that have expressed interest in the idea of diverting water between watersheds: York region, Guelph, Waterloo-Kitchener, London and Hamilton. So a series of intra-basin transfers, combined with climate change, could have devastating impacts on lake levels and impact our ecology and economy. Ecological impacts of lower lake levels would include destruction of wetlands and loss of fish, bird and wildlife habitat. Economic impacts would include rising shipping costs, declining property values and recreational losses that might be experienced by marinas, fishing tours—those sorts of things.

To move on to our suggestions for amendments, we feel it wouldn't take a lot of effort to strengthen the legislation and effectively address intra-basin transfers. The specifics of where we want to see changes: One aspect of the legislation that has largely flown under the radar of discussions is this idea of consumptive use as part of the threshold for triggering standards for intra-basin transfers. If you look at the three different exception standards in subsection 34.6(2), each time it refers to "the portion of the new or increased transfer amount that is lost through consumptive use." What this means is that the thresholds are not referring to absolute amounts; they're referring to the portion that's consumed. This is important. A municipality on average consumes only 10% of the water. So if you look at the threshold for regional review, which is a third exception standard in subsection 34.6(2), this refers to 19 million litres per day. To put that into context, that's about 50 large swimming pools. Once you factor in consumptive use for a municipality, the trigger level actually goes up about 10 times' to around 190 million litres per day. That's about 500 large swimming pools. That's a massive amount of water.

What's even more troubling than this is when you combine it with a second exception in subsection 34.6(2). This second exception doesn't require any water to be returned to the source watershed. This means that the municipality could divert up to 190 million litres per day out of the Great Lakes watershed without returning a single molecule of water. If a series of diversions were approved under the second exception, you could be looking at somewhere in the region of nearly a billion

litres of water being diverted and lost to that Great Lakes watershed every day. This can hardly be considered safeguarding and sustaining Ontario's water, but it's possible under the current rules as they're drafted.

To rectify these two worrying loopholes, we suggest, firstly, removing the term "consumptive use" from the three exception standards so that the threshold only refers to absolute values; and secondly, deleting the second exception standard, which does not require return flow, and making the first exception standard, which does require return flow, applicable to all proponents. As a result of these changes, all applicants wishing to undertake intra-basin transfers would then be required to return water to the source Great Lakes watershed. Because of the cost involved in returning water, in all but the most exceptional cases this would be a strong incentive for pursuing sustainable alternatives.

A couple of other problems we see is that return flow, as it's referred to in subsection 34.6(3)—there is currently no requirement as to the quality of water that must be returned. We feel that this is something that needs to be addressed in the legislation. Also, the transfer of sewage water at this point is not considered an intra-basin transfer. Regulation-making authority has been included to make this the case, but until this authority is exercised, a municipality could transfer millions of litres of waste water across a watershed and not be caught by any of the provisions of the legislation. We would recommend waste water being explicitly considered as an intra-basin transfer in the legislation.

The last thing I just wanted to comment on is that there is still a lot of work to be done in regulations following this legislation to further define and implement the wording of the legislation. We encourage the Ontario government to work very closely with the annex advisory panel in drafting these regulations. But recognizing that it could be some time until regulations are in place, we think it would be most appropriate for the government to impose an interim moratorium on all new or increased intra-basin transfers. I believe this power already exists in the Ontario Water Resources Act, but we would recommend explicitly including that power in the draft legislation so that there can be no question that the authority exists.

Thank you for your time.

**The Vice-Chair:** Thank you. Excellent on your timing: Your 10 minutes has expired, so very good timing on your part. Thank you very much for presenting to the committee.

1050

#### GEORGIAN BAY ASSOCIATION

**The Vice-Chair:** Could I call on the Great Lakes and St. Lawrence Cities Initiative, Mayor Brian McMullan—  
*Interjection.*

**The Vice-Chair:** I'm sorry; I'm ahead of myself. The Georgian Bay Association, Mary Muter, please. I apologize; I got a little further down the list than I should have.

Welcome, and thank you very much for coming. I hope you can find a comfortable position there; I see you have a bit of a problem. You have 10 minutes to make your presentation. If you do not use the entire 10 minutes, there will be an opportunity for members of the committee to ask questions or make comments. Please identify yourself for the record and then proceed with your presentation.

**Ms. Mary Muter:** Thank you for giving us this opportunity. I am Mary Muter, vice-president of the Georgian Bay Association and chair of the environment committee. I'm also a member of the annex advisory panel.

The Georgian Bay Association is an umbrella organization for 22 associations along the east and north coast of Georgian Bay. We represent approximately 18,000 citizens. It is our organization that has carried out the extensive work on the St. Clair River that has determined that ongoing erosion is lowering Lake Michigan, Lake Huron and Georgian Bay water levels. So any legislation that has the potential to further lower water levels is of great concern to us.

This legislation is very complex—the average citizen does not understand it. I think that's probably why you do not have average citizens here, but basically organizations. I've had several phone calls recently from people asking for interpretation of this legislation and misunderstanding it. I think you need to keep that in mind.

We know that there are disputes on the horizon for the use of water around the Great Lakes. Now is the time to take the precautionary principles that are needed and to include language that will protect this valuable resource that we have a responsibility for.

As you've heard earlier, water levels for Lake Huron and Georgian Bay are near record lows and have been there for the past six years. The impact on the wetlands of eastern and northern Georgian Bay is huge. Many wetlands have not only dried up but have now converted to grass meadows. This results in a loss of spawning habitat and will affect fish populations in Georgian Bay and Lake Huron. Shipping companies are currently unable to carry full loads, and this is having a huge economic impact. The economy associated with the recreational boating industry is also significantly impacted right now.

I will move to our recommendations—I think you have copies of them with you. We are supportive of this legislation going ahead, but we think there is an opportunity to make some amendments that will strengthen it.

Our number one recommendation is to change the word "transfer" to "diversion." I've had several conversations with people who assume that a transfer means within a watershed. "Diversion" makes that much clearer. That's a fairly simple change that needs to be made.

Recommendation number 2 is to remove the words "consumptive use," as this applies to intra-basin transfers. This language is vague and could also result in huge withdrawals/transfers of water.

In recommendation 3, we are recommending that return flow be required for all intrabasin transfers—in other words, that there be no exception—and that all transfers are then subject to full regional review.

Recommendation number 4 relates to the International Joint Commission's upper lakes study that has just begun. As part of that study, water resources within the Great Lakes are going to be assessed. We think it's important that that work be completed before any changes are made in terms of movement of water within the Great Lakes. So we're asking for a moratorium on any new or increased transfers/diversions of water within the Great Lakes until that work is completed. That is a binational effort by both our governments, costing a huge amount of money. Let's put a moratorium in place until that work is completed.

Recommendation number 5: Again, the transfer of sewage is a way of diverting water. Let's not wait for the regulations for that but simply amend the legislation right now to include sewage as a method of transferring water.

Our sixth recommendation: Conservation measures are mentioned in this, but the government needs to move quickly to implement conservation measures for water use across the province.

Our final recommendation: In order for the public to have adequate input to this process, we think that Ontario should create a public secretariat to the regional body so that Ontario citizens will have ample opportunity to have input.

Those are my comments.

**The Vice-Chair:** Thank you very much, Ms. Muter. I apologize for mispronouncing your name when I called you up.

We have six minutes—two minutes per side—and I would like to start the rotation with the official opposition.

**Mr. Garfield Dunlop (Simcoe North):** Welcome, Ms. Muter, to today's hearings. I'm not sure if it's on the record or not: Going back to the fine work your organization has done with, I think, the Baird report, which indicates that one of the main reasons the Great Lakes have lowering water levels is because of the erosion on the St. Clair River, can you tell us on the record today how much money you spent on that report?

**Ms. Muter:** We've never done anything like that report before. We had to raise \$250,000 to do that work. Basically it's a story of governments not watching the store. When that report was completed, it was in 2005, and at that point they determined that until 2000, there was a previously unknown diversion of 845 million gallons per day in the St. Clair River. Since then the data has been updated. That diversion has now increased. It's lowering Michigan-Huron levels at the rate of three centimetres annually. The cumulative impact of that diversion is now 2.5 million gallons per day. This is a diversion our governments were not aware of that they're now aware of, and because of that the upper lakes study is under way. But it definitely points to the need for precautions in terms of allowing any diversions of water within the Great Lakes.

**Mr. Miller:** Thank you for your presentation today. I know that Garfield and I—our ridings border Georgian Bay and water levels are certainly one of the key considerations we have. I think you make a lot of good recommendations for amendments, in particular your recommendation about return flow for any water, be it intra-basin transfers or diversions, I guess is what you're recommending. I would just like to support you in that and say, from my perspective as a member for part of the Georgian Bay coast and Lake Huron, that keeping water from being transferred out of our basin is of utmost importance, so I support you on that.

**Ms. Muter:** Thank you.

**The Vice-Chair:** Mr. Prue.

**Mr. Prue:** Recommendation 4 is intriguing, and if you were here a few minutes ago, I asked the same question. You are pleased with the language that requires the transfer of sewage to be treated as an inter-basin transfer; however, you want it to be included in the legislation. I've said many times in the House that when it's in the legislation it does not allow a subsequent minister who may have a different attitude to simply change it by regulation. Could you just expand on why—if that's it, then I guess I've already said it—you feel it needs to be in the legislation rather than in regulation?

**Ms. Muter:** Exactly for the reason you have just stated. York region is currently transferring water via sewage down to Lake Ontario. We think that loophole needs to be closed and closed quickly, and the best way to do it is through legislation, not regulation.

**Mr. Prue:** Because any subsequent minister could say, "That's fine, York region, you can save some money; do it the old way," and that's the end of that.

**Ms. Muter:** That's correct.

1100

**Mr. Prue:** Are there other parts in this legislation that cause you similar concern, that you feel the government may be leaving too much to regulation and not enough contained within the body of the bill?

**Ms. Muter:** That relates to the exception for intra-basin transfers. I think they're saying that that could be tightened up by regulation, but we think the time to do it is now, by amendment, and prohibit the exception and require return flow for all intra-basin transfers.

**Mr. Prue:** The last recommendation, if I have time—no?

**The Vice-Chair:** No, I'm sorry. Thank you very much. To the government side.

**Mr. Leal:** Thank you very much for your presentation this morning. I just note, on the information we have today: Is the Georgian Bay Alliance different from the Georgian Bay Association?

**Ms. Muter:** That's a typo error on your schedule. It is the Georgian Bay Association.

**Mr. Leal:** My next question: You noted in your presentation water-taking from the St. Clair River. Indeed, it would have been the federal government that wasn't minding the store because they have jurisdiction for navigation and shipping in Ontario.

**Ms. Muter:** I think that Ontario should have an interest in a Great Lakes diversion of that magnitude. I definitely think they should. Actually, the Ontario government does have a representative on the upper lakes study board.

**The Vice-Chair:** Thank you very much, Ms. Muter, for coming such a great distance to the committee.

## GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE

**The Vice-Chair:** Now I would like to call on the Great Lakes and St. Lawrence Cities Initiative, Mayor Brian McMullan. Welcome, Your Worship.

**Mr. Brian McMullan:** Thank you, Madam Chair.

**The Vice-Chair:** You have 10 minutes to make your presentation. If you use less than that, there's an opportunity for committee members to ask questions. Before you start, if you would identify yourself by name for the record, and then proceed.

**Mr. McMullan:** My name is Brian McMullan. I'm the mayor of St. Catharines and regional representative for the Great Lakes-St. Lawrence initiative. I'm accompanied by Nicola Crawhall, who's our director for the Canadian office.

Madam Chair and members of the justice policy committee, I appreciate the opportunity to speak with you today on behalf of the Great Lakes and St. Lawrence Cities Initiative. As I mentioned, my name is Brian McMullan. I'm the mayor of St. Catharines, a proud Great Lakes community.

By way of background, the Great Lakes and St. Lawrence Cities Initiative is a binational organization of mayors across the Great Lakes and St. Lawrence basin. We currently have 42 members, of which 22 are Canadian mayors. We have come together as the cities initiative to give a voice to the priorities and concerns of cities regarding the protection of the Great Lakes and St. Lawrence water system.

*Interjections.*

**The Vice-Chair:** I would caution everyone that the noise level in here is getting fairly high. Out of respect for presenters, I would appreciate if everyone would listen, please.

Please go ahead.

**Mr. McMullan:** Thank you, Madam Chair. The cities initiative has been a strong supporter of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Compact, and we have actively participated on Ontario's charter annex advisory panel.

While the quality of the Great Lakes has consumed much of the attention and resources of senior governments over the last 30 years, at the local level we are increasingly feeling the impact of water quantity issues. This impact manifests itself in several ways.

Firstly, lake and river levels are affected by water diversions, bulk water removals and climate change. Along the St. Lawrence, in Lake Superior and in Lake Huron, we are already seeing quite dramatic lake and

river level variations. This can have an effect on recreation and water and sewage services.

Secondly, municipalities draw on the water of the Great Lakes for our drinking water and rely on the lakes to discharge our treated sewage. In fact, 80% of Ontarians will receive their municipal drinking water from the Great Lakes. Because of the excellent quality of Great Lakes water, and limitations on groundwater, there is increasing pressure on some municipalities that do not currently draw from the Great Lakes to build a drinking water supply pipe to an existing Great Lake.

Thirdly, and finally, municipalities and their residents and industries are enormous consumers of water. Municipalities have a responsibility to introduce water conservation and efficiency measures to ensure that water is not being used unnecessarily. While it may be difficult for residents to accept that there are in fact issues of water scarcity when they live at the shores of the Great Lakes, water conservation and water efficiency are important drivers of energy efficiency for municipal operations. So from a climate change perspective, water conservation and water efficiency measures are essential.

For these three reasons, the cities initiative has taken a keen interest in the compact. That is why the mayors felt it was important for me to come to speak to you today to express our collective support for Bill 198.

As a binational organization, the cities initiative is in full support of the principles articulated in the compact. We are well aware of the pressures that will continue to mount, particularly in the US, to divert water from the Great Lakes to communities further south. It is therefore essential that we enshrine in law that such transfers are prohibited. The cities initiative is supportive of this principle.

We are also well aware of the pressures on some Ontario communities to seek or expand water-takings from one of the Great Lakes, and in some cases to discharge their sewage into another Great Lake. Under the terms of the compact and under the provisions of Bill 198, this would clearly constitute an intra-basin transfer, subject to very strict criteria.

The cities initiative is supportive of prohibiting these intra-basin transfers except under exceptional circumstances. The exemption criteria appear sound, although they are quite high-level, and it is difficult to understand at this point how they will be prioritized and operationalized. How the exemption criteria will be applied in practice is vitally important for municipalities. If I may, Madam Chair, I would like to expand on this point for a moment.

It has been the experience of some municipalities in Ontario that imposing restrictions on water-takings at the end of a lengthy planning process—that is, at the point of applying for a permit to take water—is the wrong way to go. By this time, all the planning is complete and the shovels are nearly in the ground. This is not the point at which a municipality should find out that it cannot proceed with its water-taking. It must begin at the very beginning of the planning process, at the point of the

environmental assessment. This provides clarity, predictability and transparency for all parties concerned.

The cities initiative would request that the test as to whether an intra-basin water-taking meets the criteria articulated in the compact and in the bill should occur at the beginning of the planning process. This should be integrated into the environmental assessment process. This would require a change to subsection 34(1) of the bill, which currently links the approval of an intra-basin water transfer to a permit to take water. It would also require a change to the class EA guidance materials. To reiterate, it must not apply at the point of applying for a permit to take water.

Secondly, the exemption criteria must fully respect the changing nature of Great Lakes water levels, both currently and in anticipation of the increasing impact of climate change. The exception standard criteria does require that the water-taking have no significant individual or cumulative adverse impacts on water quantity or quality. In our opinion, this criterion should take precedence over the other criteria, and should explicitly require an assessment of lake water levels, both current and forecasted. Applying this type of criterion will require rigorous analysis of lake levels and the causes of declining levels.

To give the committee members some context, Lakes Michigan and Huron and Georgian Bay, the so-called middle lakes, are experiencing low water levels, this in spite of near average precipitation levels and good ice coverage.

Dr. Rob Nairn, the independent hydrologist who is studying the outflow from Lake Huron to the St. Clair River, estimates that from 2005 to 2006, the permanent loss of water from the middle lakes through the St. Clair River has been 20 to 30 centimetres.

An upper lakes study currently being undertaken by the International Joint Commission will provide analysis of the St. Clair River issue and propose mitigation measures. This study is vitally important, given the economic and environmental costs resulting from the ongoing decline of the middle lakes water levels.

It is this type of analysis that will be needed on an ongoing basis if and when the exemption criteria are put to the test. Without this type of information, informed decisions will not be possible and the exception criterion will be meaningless.

The cities initiative offers its assistance to the province in developing an approach to applying the intra-basin transfer exception criteria in practice.

I'd like to close with one final comment regarding the adoption of regional water conservation and efficiency objectives by the parties to the compact. The cities initiative sees this as an important opportunity to advance the issue of water conservation and water efficiency around the basin. The language of the compact and of the draft objectives is based on a voluntary approach. And there is much pressure from some stakeholders to focus on water efficiency over water conservation, which sounds remarkably similar to energy intensity targets versus hard caps on emissions in the climate change debate.

1110

We need to focus on both conservation and efficiency and we need to do so within a binding framework in Ontario.

The cities initiative is taking a leadership role in promoting water conservation amongst its members. Its members have pledged to reduce water consumption by 15% from 2000 levels by 2015.

Some municipalities are well on their way to achieving this target, but as usual, we are using the limited authority and tools made available to us. It often involves a resource-intensive effort, providing financial incentives to individual residents and businesses to use water-efficient appliances and devices. In the end, it is a somewhat inefficient way to promote efficiency and conservation, but it is all we have available to us.

The cities initiative would therefore request that the province proceed quickly to develop a water conservation program and to go further than the proposed regional objectives. We would encourage the province to learn from municipal water conservation programs and proceed with some short-term measures immediately, rather than undertake lengthy research on water conservation.

To give you an example of something that could be done immediately, municipal water conservation efforts would be given an enormous boost if the province would legislate the use of water-efficient appliances and devices for existing residences and businesses. For example, over a quarter of the water used in a single-family home is for toilet use. Currently, the building code only mandates that low-flow toilets be used for new development, but anyone can walk into a hardware store and buy a 13-litre toilet to replace an old one in their home, and it is usually cheaper than a six-litre toilet. These inefficient toilets have been banned in the US for over a decade, but we continue to allow their sale here in the province of Ontario. The province should ban the sale of these inefficient appliances.

To sum up on the issue of water conservation, much of the work has already been done at the municipal level; we need to get on with it. The cities initiative offers its assistance to the province and the assistance of its members in eight states and two provinces toward this effort.

In conclusion, the cities initiative is in support of Bill 198, Safeguarding and Sustaining Ontario's Water Act. We support the ban on water exports outside of the basin. We support the ban on intra-basin transfers, except in exceptional circumstances, and we encourage the province to work with the cities initiative in finding an effective way of operationalizing the exemption criteria. We also encourage the province to prioritize consideration of lake levels when considering this criteria. We support the development of a provincial water conservation framework, and we encourage the province to proceed quickly with adopting some short-term policies to accelerate water conservation in the province, and we offer our support for this effort.

Thank you once again for your interest in the comments of the Great Lakes and St. Lawrence Cities

Initiative and for allowing me to take this time to make a presentation today.

**The Vice-Chair:** Thank you very much. The 10 minutes has expired, so there's no opportunity for questions or comments, but I certainly appreciate your appearance before the committee today.

#### CANADIAN ENVIRONMENTAL LAW ASSOCIATION

**The Vice-Chair:** I call on Sarah Miller of the Canadian Environmental Law Association.

**Ms. Sarah Miller:** Thank you so much for the opportunity to appear before you today.

**The Vice-Chair:** Please state your name for the record before you start. You have 10 minutes.

**Ms. Miller:** My name is Sarah Miller. I am a water researcher for the Canadian Environmental Law Association, which is a public interest legal clinic in Ontario. It has a mandate to represent low-income Ontarians on environmental matters but also to improve the province's environmental laws and the public's access to environmental justice.

We were founded in 1970, and we've worked since then on issues of Great Lakes sustainability, regarding both water quality and quantity. We actually worked on the original Great Lakes Charter in 1985, which was a non-binding document, and I think we're here today because the fact that it was non-binding meant that there was not much progress made on many of the terms of that charter.

We're quite gratified to be here today because we have had such a long history on this issue. We worked very closely with Ontario's negotiating team, because we serve not only on their advisory panel, but also on the advisory panel to the Council of Great Lakes Governors. So we had a window into the entire four-year negotiation. Because of that, I have some concerns I'd like to raise today. Primarily, I'm here to urge you to pass this bill immediately. We're very supportive of it, not only because it's long overdue but because we think it's crucial to changing the culture of water wastage in North America and in the Great Lakes region as well. We need a culture that promotes living within our natural water budgets, and we feel that the conservation programs that are required within this agreement are the key to doing this and can go a long way to preventing the kinds of water conflicts and needs that we see emerging now in Ontario, and future water shortages.

One of the unappreciated parts of this bill is that for the very first time we are protecting groundwater in this province. Our federal laws fail to do this and the main US law in the United States that now affects water allocations does not include the groundwater portion of the Great Lakes, which is estimated to be as big as Lake Michigan. So this is one reason we need to put this bill forward now.

I feel very strongly that political issues could still derail these efforts. We all know about the sunbelt areas

of the United States, that their populations are growing, their political influence is growing at the same time that their water supplies are plummeting. This is only going to get worse over time.

Also, my observations from being involved in these negotiations are that not all of the parties are equally committed. These were very tough negotiations. We didn't get our way all the time, but we managed to turn around weak first drafts, and it was the Ontario public's concerns that did this. They reversed the claim by the states that they could not ban diversions and they actually went back and got further legal opinions. So it was Ontario that really has been responsible for the complete ban of large-scale diversions out of the Great Lakes, with the exceptions that we've heard about today.

I'm not going to go into great detail about what this act could do, but I think the challenge before you today—and you've heard from other deputants here—is, what do we do in the legislation and what do we do in the regulation? It's my understanding that we have to enshrine in this piece of legislation the existing agreement that we have. Flawed as it is, it will give us a level playing field and we will be operating under the same language and terms that are included in the agreement as the other jurisdictions. I think this is incredibly important. It's also very important that Ontario continue its leadership; it has one of the best water permitting systems in the entire Great Lakes region. It's the strongest. We've led by example. Ontario is now the chair of the regional body that oversees the implementation of this agreement. It's very important that we put this in place now so we can show that leadership.

I too share a lot of the concerns that have been raised today. Our water advisory panel to the Ministry of Natural Resources has had an undertaking from Kevin Wilson, the deputy minister, that our committee will continue to work on the regulations and the tough issues we've heard about like intra-basin transfer and the issue of waste water, to name just two.

I'm not going to go through my actual recommendations that have been covered by other people, but I guess I'd like to clear up a few things. We too have concerns about the cost-setting for water. They're quite the opposite of concerns that were voiced by the Canadian Bottled Water Association. We feel that those charges may not be tough enough because we don't yet know the full breadth of the programs that will flow from this agreement. But there is a separate consultation on the pricing issue. All that this act does is give us the powers to set prices like other provinces, and there are very many other provinces that do have water permitting charges right now. There will be separate consultations, I think starting as early as next week, with all of the sectors on what those charges should be, and that will allow some time and for quite a bit more detail to be put into that consideration.

1120

As well, in concluding, I think conservation, as I have said, is the key here to really moving ahead. We've worked for decades trying to get conservation to be man-

datory in this province and to have a legal framework. There have been many efforts, and they've been abandoned, frankly. So we really do support what we just heard the mayors' initiative say about conservation.

I also support their point about the environmental assessment process. We've heard from a number of people today that we need our water programs to be integrated. Where these things fall outside of actual water laws and become part of the environmental assessment process, we need to remedy that. But I think that can be done in another process, and we surely would support that.

Two things: In addition to submissions that we made on the EBR, after thinking about this further in the last couple of weeks I think that all applicants for exemptions under this program should be required to have a mandatory water conservation program in place, and it should be tied to their permitting system. I think we need to integrate conservation into our permitting system.

Additionally, one of the concerns I have is that at the last minute in the negotiations around the agreement, a lot of very important things were backpedalled, in a way, or the language was changed in the agreement. I applaud the inclusion of the precautionary principle, which has been paraphrased in the agreement, in Ontario's legislation because I think it's incredibly important.

Additionally, though, I think we need to go a bit further on climate change. For some fairly political reasons, all but one reference to climate change in the agreement were taken out at the last minute. I am very concerned that this be remedied, and I would urge Ontario to actually mandate that—the agreement calls for a five-year review of the entire program and its adequacy. I would like to add to that five-year review an assessment of climate change impacts within that period to assure that we at least are showing leadership and not being in denial, like some other jurisdictions, that indeed there are climate change impacts. So that would be a new recommendation from us.

I concluded our submissions with more details, the EBR, that I hope you'll also take into consideration. Thank you.

**The Vice-Chair:** Thank you very much, Ms. Miller. That concludes the time that's been allocated, so I appreciate your taking the time to make your presentation.

#### ONTARIO FEDERATION OF AGRICULTURE

**The Vice-Chair:** I would like to call on the Ontario Federation of Agriculture, Don McCabe, executive member. Welcome, Mr. McCabe. I see you've been here, so you know there are 10 minutes, and if use the entire 10 minutes, there is no opportunity for members of the committee to make comments or ask questions. Would you introduce yourself and Tina as well for the record?

**Mr. Don McCabe:** Thank you, Madam Chair, and thank you for this opportunity to speak to the committee. My name is Don McCabe, and I'm an executive member

of the Ontario Federation of Agriculture. I'm accompanied today by Tina Schankula, one of our policy researchers within the federation.

First of all, the federation is the voice of Ontario's farmers. We are supported by approximately 38,000 individual farm family members out there, or nine out of 10 Ontario farmers. The OFA has also served as a member of the Great Lakes annex advisory committee.

Farmers are integral partners in managing the natural environment. We rely on the soil, air and water to conduct our business, and as such have a vested interest in the sustainability of these resources. Because of the fact that farmers interact intimately with the natural environment on a daily basis, an agricultural perspective to water resources management is critical.

The OFA's written submission dated May 3 is in your hands, I believe. Today I will highlight a few of our comments from that submission and welcome any questions.

I am pleased to note that some of agriculture's previous comments have been acknowledged in the draft legislation. While we remain opposed to the elimination of the existing exemption regarding watering of livestock, we are pleased to note that there is no authority to lower the threshold amount by regulation.

We are also very pleased that this bill recognizes the substantial stewardship role Ontario's agricultural producers take to minimize their water use and ensure an efficient use of water, by recognizing that conservation charges will not apply to primary production.

Fundamental to the implementation of the Great Lakes Charter Annex agreement is the understanding that Ontario agriculture must not be placed at a competitive disadvantage by being required to meet higher standards than our competitors in other Great Lakes basin areas. We must remain competitive with jurisdictions outside of the Great Lakes basin.

One area of major concern to agriculture is the concept of "consumptive use" and return flow. The application of consumptive use and current consumptive use coefficients do not work for Ontario agricultural applications. We advocate that the definition of consumptive use clearly state that it does not include water used by plants, including transpiration, at least for agricultural purposes. Furthermore, the use of beneficial management practices for agriculture should be used in lieu of existing consumptive use and return flow requirements. In addition, significant public research needs to be conducted on the issue of consumptive use as applied to Ontario agriculture.

It is OFA's contention that the entire permit-to-take-water process needs to be redesigned, at least for agriculture. An agriculture-specific permit-to-take-water application process is required. Agriculture is the industry with the largest number of individual permit holders, and as such, we require a permitting system that meets the needs of these users. This process would also acknowledge that some conditions placed on industrial or commercial permits simply do not make any sense in agriculture. The MOE director must be obligated to con-

sult with its sister ministry OMAFRA regarding appropriate conditions on agricultural permits.

The definition and interpretation of "water-taking" must be examined to ensure that it does not include agricultural storage ponds. These ponds are created to capture spring melt runoff and precipitation. It is done to alleviate the stress other water sources may face when farmers require the water for irrigation. The permit system must be able to recognize beneficial management practices such as these and adapt to their use in a manner that does not discourage the practice of wise water management.

OFA is opposed to the expiry of any permit that results in a delay in renewal if an applicant has not received a decision from the director. Any applicant who has met the appropriate renewal time frame must receive a decision from the director and the permit must remain valid until such time as the applicant receives that decision. Anything less is unacceptable.

Any provincial officer's order issued to a farmer with the capacity to pump 50,000 litres per day must clearly state that the cost of providing monitoring will not be borne by the farmer, particularly if there is a requirement for the use of meters. Furthermore, the pump capacity must not be the sole means of determining capacity in agriculture. The entire irrigation system must be considered, including the size of the pipes and nozzles.

Thank you for your time today. I am pleased to take any questions.

**The Vice-Chair:** Thank you very much, Mr. McCabe. We have six minutes left. By rotation, the third party has the first two minutes.

**Mr. Tabuns:** Thank you for coming in to present this. I'm sorry; I ran out there for a second. Do you have concerns about the intra-basin transfers from one Great Lake to another? Is that a concern in the agricultural community?

**Mr. McCabe:** The concern for the agricultural community on intra-basin transfers is the fact of competitive edge again. If it's going to be used for movement on that fact and it's not allowed on this side of the border, then we've got an issue. Everything I do is based on a North American and wider world market. Anything that we lose competitive edge on is detrimental to Ontario agriculture.

**Mr. Tabuns:** The thing you noted here about agricultural storage ponds: Is this becoming a larger and larger practice in Ontario these days?

1130

**Mr. McCabe:** It's becoming a larger practice for certain production management that occurs within the province. Certain producers find the need for that capacity. It also ensures that they have the water that's required. If you're going to make that kind of an investment into that crop, you need to be able to ensure that the water's going to be there to nurture that crop to its fullest potential.

**Mr. Tabuns:** Are your members seeing water shortages in any parts of the province, difficulty getting irrigation water for crops or livestock?

**Mr. McCabe:** It comes right back to our comments here with regard to permits: We are finding a permitting process that is out of line and out of reality with regard to our users. Certain private wells now are starting to run dry, which means that we are looking at greater needs to ensure those permits stay in place. We get one shot a year to do it right, and if that crop dies on the vine, that's a long time to come back around.

**The Vice-Chair:** Mr. Leal.

**Mr. Leal:** Thanks very much, Don, for your presentation this morning. Just a couple of questions: Would there be any farms in Ontario today that would use more than 379,000 litres per day of water? I have heard of corporate farms maybe in North and South Carolina, but I'm not familiar with any farms in Ontario that would be beyond that threshold level.

**Mr. McCabe:** First of all, sir, I'm not terribly crazy about the terms "corporate farms" versus "family farms" versus anything—

**Mr. Leal:** Neither am I. I'm just making reference to the States.

**Mr. McCabe:** The issue is more of the size of the operation requiring that level of water. It could be a large livestock or a large greenhouse production facility. I'm not familiar with anything in particular, but I am sure that there's probably something on the drawing board if there isn't already.

**Mr. Leal:** Just a comment: We're not putting meters on private wells in Ontario.

**Mr. McCabe:** We're aware of that and we appreciate that, but we also want to keep you on notice.

**Mr. Leal:** I appreciate that. You may want to see a statement that was released by Dr. Kyle, the MOH from Durham region. Comments that he reportedly made were not correct, and he's now issued a province-wide statement on that matter.

**The Vice-Chair:** Mr. Dunlop, your rotation.

**Mr. Dunlop:** Thank you for being here. I know this all involves water-taking, and the other thing that's key to you right now is the source protection legislation. I'm sure you must be very concerned about that. I met with a group of farmers last Saturday morning, and this regulation that's going out setting up the committees that are going to deal with source protection has left farmers with only three votes out of 16 on these committees. This is a regulation that's on the Environmental Bill of Rights, and apparently the final comments have to be made tomorrow. Are you putting any kind of concerns in on behalf of the farmers of Ontario on the makeup of those committees?

**Mr. McCabe:** We've been very actively involved in that process from the get-go, and we're wanting to ensure that the agricultural voice is very much heard in those committees. I come from a watershed myself that is extensively large, and we need to ensure that agriculture, as the second-largest industry—but the one that feeds you in this province—is properly recognized. I would hasten to add that any regulatory backstop that comes along—we appreciate having an appropriate regulatory

backstop to anything that comes along. But if I could liken this to the game of summer, to baseball, if you put the backstop too close to the pitcher, you can't even get the game started. So let's make sure that we put this in the right spot and the right context, that all participants find the opportunity to properly participate in the future.

**The Vice-Chair:** Thank you, Mr. McCabe and the Ontario Federation of Agriculture, for your participation and presentation.

## ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

**The Vice-Chair:** If I could call on the Ontario Sewer and Watermain Construction Association, Frank Zechner.

**Mr. Frank Zechner:** Good morning.

**The Vice-Chair:** Good morning, Mr. Zechner.

**Mr. Zechner:** My name is Frank Zechner. I'm the executive director of the Ontario Sewer and Watermain Construction Association. You should be receiving a very short and easy-to-read, and hopefully easy-to-comprehend, slide deck in terms of the very narrow issues and concerns that we have.

The Ontario Sewer and Watermain Construction Association represents more than 700 companies that supply and install the vast underground network of clean water arteries and pipes that are relied on by the residents and businesses of Ontario. We've been representing the sewer and water main construction industry for more than 35 years, and we've been advocating full-cost pricing and the sustainability of Ontario's water infrastructure. We are also an advocate for worker safety and industrial safety in terms of our overall construction activities, and we take very seriously the safety of our workers, who are now impacted in terms of water-taking permits.

Due to the fact that sewers operate on a gravity flow basis, they must be installed relatively deep as compared to all other utility services. It is not uncommon for sewers to be located more than 20 feet below the road surface. Water services, for a variety of technical reasons, are also among the utilities that are buried the deepest in road allowances and other public rights of way. The depth of installation for sewer and water main systems are often below the local water tables. Water-taking permits for our industry are not discretionary; they are a mandatory safety requirement for the crews who install, repair and connect the pipes and work to make up our water infrastructure. We are concerned about the approach taken in Bill 198, and the impact that this will have on water and waste water construction in the province. Our concerns about Bill 198 include the following:

—Bill 198 does not distinguish between water-taking permits for industrial or commercial feedstock versus water-taking for safety-related purposes, and in particular safety of construction workers.

—Bill 198 does not distinguish or expedite temporary water-taking permits for safety purposes from other long-term non-safety-related purposes.

—There should be a separate exemption for short-term water-taking permits that are taken to protect the safety of workers who are required to work in trenches or tunnels that are at or below the local water tables.

—There should be reduced administrative burdens associated with water-taking permits for tunnel construction, where the water is simply returned in an unaltered state to the water body or aquifer that generated the infiltration.

Installation of underground water infrastructure often involves trenching or tunnelling at depths below the water table. The laws of physics and nature dictate that when you create a trench or a hole below the water table, it will fill with water. Water in a trench is a major safety hazard. Water creates a deadly electrical hazard for electric power tools and water can weaken trench walls and dramatically increase the risk of a fatal trench collapse.

Water in a tunnel is a major safety hazard. Water creates, again, a deadly electrical hazard for electrical power tools and lighting, and water infiltration can result in flooding and death by asphyxiation. Unless a trench or tunnel is dry, construction must stop. The cost and delays imposed by the need to prepare a detailed hydrological report and permit application and await a minimum 30-day posting for comments can add huge costs to municipalities that already have very limited financial resources for water infrastructure construction.

It is not always apparent in municipal tender packages whether water-taking permits are needed. Water table heights vary by season. Municipalities are not able to provide our contractors with adequate information about the relevant height or ferocity of the local water tables. Municipalities often do not have the necessary background hydrological data to provide to contractors.

An exemption and/or reduced administrative requirements for construction trench or tunnel water-taking permit will not impair water quality or safety. Typically, water taken from trenches or tunnels are sampled and analyzed before being discharged. The preferred system is to allow trench and tunnel waters to be returned to the water body or aquifer that generated the infiltration. Again, we're talking about temporary activities, not long-term, sustained activities over months and years. Quite often, our trenches or tunnels involve a matter of de-watering over a period of days or weeks, and not a long-period commitment.

Concerns regarding tunnelling: Yesterday we saw a great deal of press coverage concerning the opening of the cooling tunnels for this Legislature building, in which cool lake water is brought up to the Queen's Park Legislature building in order to assist and alleviate any energy drains. Of course, that tunnel was created by tunnelling. It was tunnelled below the bottom of Lake Ontario. During the course of that construction, water-taking permits were necessary in order to deal with the water infiltration. Under Bill 198, the construction and the opening of that tunnel might have been considerably delayed because of any changes that might have occurred in terms of water-taking rates or conditions in the tunnel

that might not have been anticipated before the machines actually started work.

**1140**

The complex and lengthy water-taking permit process will be even more onerous with the passage of Bill 198. There may be further volume restrictions on the amount of water that can be taken. If the trench isn't dry, we can't work. It's not a discretionary amount as to whether or not we take out part of the water or all of the water; all of it must be taken out. There may be new requirements for further measurement and metering of water quantities and rates. With few exceptions, Bill 198 makes no distinction with respect to the source or purpose of the water-taking. One of those few distinctions in Bill 198 is to exempt water-taking for firefighting purposes and other emergency purposes. Why is construction worker safety any less important than fire safety?

Bill 198 will authorize water-taking fees. We should not be putting an additional government fee on construction worker safety. The need for water-taking permits is unique to our sector given the depth and nature of sewer and watermain construction work. We are asking the government to consider amendments to Bill 198 that would have the following result: that is, to recognize and exempt water-taking for construction-related purposes for the safety of the workers.

In the alternative, if an exemption is not possible, reduce administrative burdens and expedite the approval system for water-taking purposes in the sewer and watermain construction sector where the permit is for the express purpose of construction worker safety. Water-taking permits for construction safety purposes should not be subject to any water-taking fees.

Those are my submissions. Thank you.

**The Vice-Chair:** Thank you very much, Mr. Zechner. There are three minutes left. The rotation starts with the government.

**Mr. Leal:** Frank, thank you so much for your presentation. As a former city councillor, I had the opportunity to tour trenches on several occasions. We certainly do take the points you've made very seriously about workplace safety in terms of workers being in those trenches. I know that they have potential risks that they might face. We'll certainly take your suggestions into consideration as we move forward on Bill 198.

**Mr. Zechner:** That's welcome news. Thank you.

**The Vice-Chair:** The official opposition: Mr. Dunlop.

**Mr. Dunlop:** I would basically echo those concerns. I hope that wasn't the intent of the bill, to make it more bureaucratic for the construction industry that's laying a lot of this pipe across our province. I think overall you deal with a lot of health and safety issues to begin with. Having to deal with a lot of paperwork doesn't seem to accomplish—I think that's money that could be put on more pipe and more infrastructure that's desperately needed in the province. I would hope that the government would bring some kind of a recommendation through and, even in the bill, not leave it up to some regulation that we'll see three years down the road. I would support what you're trying to say.

**Mr. Zechner:** Thank you.

**The Vice-Chair:** Mr. Tabuns.

**Mr. Tabuns:** Certainly the worker safety aspect is of concern here. One of the questions that I have for you looking at your presentation is: How is the water that you take out returned to the aquifer? What technology, what methodology, do you use?

**Mr. Zechner:** In urban areas it's quite often taken to a sewage treatment plant. In more remote settings, it's tested and, if suitable and permitted by local authorities, we will return it to an actual water body, but most of the time it is stored and then taken to a sewage treatment plant.

**Mr. Tabuns:** Thank you.

**The Vice-Chair:** Thank you very much, Mr. Zechner.

#### FEDERATION OF TINY TOWNSHIP SHORELINE ASSOCIATIONS

**The Vice-Chair:** I will call on the Federation of Tiny Township Shoreline Associations, Judith Grant, president. Good morning, Ms. Grant. You have 10 minutes in which to make your presentation. If you use up the entire 10 minutes, there will be no opportunity for members of the standing committee to make comments or questions. Before starting, if you could identify yourself for the record and then just proceed with your presentation.

**Ms. Judith Grant:** My name is Judith Grant. I'm the president of the Federation of Tiny Township Shoreline Associations.

Ladies and gentlemen, the Federation of Tiny Township Shoreline Associations, of which I'm president, represents 24 homeowners' associations located along 72 kilometres of shore in Tiny township. Tiny, as you may know, is a township in Simcoe county. It lies north of Elmvale and Wasaga Beach and west of Penetanguishene and Midland. Twice a year we publish a 16- or 20-page newspaper, which goes to all 10,000 households in the township.

Usually, our interests and concerns are focused at the municipal level. The federation has no political affiliation. The directors of our association are of all political stripes. I myself am philosophically a Liberal, and the members of our member associations are likewise diverse in their political allegiance. So when we come to speak to you about Bill 198, it is not in support of one party or another, but rather to address a shared concern about one essential aspect of the bill.

The residents of our township are keenly interested in environmental matters. Our official plan is an "environment first" plan that embodies extensive provisions to preserve the natural environment for wildlife and people. But those of us who live along Georgian Bay have been sharply aware for a number of years that something is seriously out of whack in the upper Great Lakes.

—The levels of Lake Huron and Georgian Bay have fallen almost two metres since the high water of 1986, while Lakes Erie and Ontario have remained at normal levels.

—This drop in upper lakes water levels has been devastating for vital wetland ecosystems over a huge area.

—It has jeopardized the health of Georgian Bay by exposing rocks, drying up fish spawning beds and encouraging the growth of stinking algae, besides making navigation difficult and many beaches unswimmable.

To our great relief, the International Joint Commission is right now undertaking studies to study the drop in water levels and recommend mitigation methods.

We would like to applaud the Ontario government unreservedly for introducing Bill 198, which puts in place the legislation needed to support the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement. But there is one provision in the bill that could jeopardize any attempt at stabilizing and restoring the water levels of the upper lakes.

Bill 198 takes a firm stand against diversions of water out of the Great Lakes basin, and we are glad to see this. We also support that section 34.6 recognizes the importance of not diverting water from any one of the five major watersheds in the Great Lakes-St. Lawrence River basin to another. But we are appalled at the possibility of a series of proposals taking advantage of the huge exceptions allowed in 34.6(2)(i), paragraph 1. These exceptions work against the main principle of no intra-basin diversions, and they have the potential to upset the balance of the entire Great Lakes system. Certainly, any further pressure placed on water volumes in Lake Huron and Georgian Bay will cause serious problems and could undercut the work of the IJC I just referred to.

We believe that the "exceptions" clause in the present Bill 198 will just pave the way for major water diversions that already are being planned, and more will surely follow:

—We oppose the plans of York Region to build a huge sewage pipe from the Lake Simcoe-Georgian Bay watershed to a treatment plant on Lake Ontario—a huge diversion of water from one watershed to another.

—We oppose the plans of several cities in the Lake Erie and Lake Ontario watersheds to draw drinking water from Lake Huron or Georgian Bay and divert the effluent to the lower lakes.

In our view, all these exceptions should be removed from the bill. Firm statements about living within our means and about conservation should replace them. You would then be passing a bill of which you and future generations truly could be proud.

I'd like to leave you with a modest example of what happens when water is drained away from where it lies in the natural scheme of things. The Nature Conservancy of Canada owns a block of woodland directly behind the beach where we have our cottage on Georgian Bay. Much of it is wetland and has, since 2001, been protected in our official plan. A year or two earlier, in 1999 or 2000, the township engineer installed a culvert from the swampy area—which is typically flooded after the snow melts in the spring—across the local road to a ditch, which drains excess water to the bay. The effect of this culvert has been to deprive the swamp of time in which

to slowly absorb the spring meltwater, and the consequence of that is that the swamp has gradually gotten drier. Many of the cedars that grow there have become unstable and over the last couple of years a large number of them have fallen over, exposing huge flares of roots. What used to be a fine stand of trees is now a pick-up sticks mess. This is a small example of what happens when water levels are tinkered with, even a little.

1150

We urge you to respect the instinct that produced the wording in 34.6(1):

“A permit shall not be issued or amended under section 34.1 so as to authorize the taking of water from a Great Lakes watershed if,

“(a) any of the water would be transferred....”

I understand that that word “transferred” means diverted out of the watershed.

This is where the clause should stop. All the exceptions should be removed.

As a society, we have been profligate in our use of water. We must learn to live within our means. We must learn to respect the natural systems that sustain us; if we fail to do that, we’ll destroy them and gradually make life on our planet impossible. Diversions of water, either for drinking or with sewage, from one watershed to another tinker with something large and important in a way that could have devastating consequences.

We have chosen to speak about only one aspect of the bill. It addresses a complex and important matter in a thoughtful, comprehensive manner. It is a good starting point.

We would note, however, in conclusion, that good thinking should be respected and drawn upon, no matter who happens to be doing it. We have reviewed the discussion in the Legislature during second reading of the bill, and we think you should pay careful heed to the points and perspective presented by Mr. Peter Tabuns.

**The Vice-Chair:** Thank you very much. We have three minutes, which is one minute per party. The rotation starts with the official opposition. Mr. Dunlop.

**Mr. Dunlop:** Thank you so much for being here and representing many of the cottage associations that are in my riding, of course. I think they all know where Tiny township is because of site 41.

I can tell you that you’ve echoed a number of the key points that were mentioned earlier by the Georgian Bay Association, but I think if you could just briefly comment on what you’ve actually seen happen—I’m very concerned about the dropping water levels of Georgian Bay. You mentioned the two metres. Can you expand any more upon that today? I think it’s something that’s bigger than what most people in this room would probably expect.

**Ms. Grant:** If you stood on the bottom with the water around your ankles back in 1986, you would have been under water. I’m 5 foot 8 inches; it would have been four inches over my head. That’s a colossal amount of water. It means that the water has shrunk back from the

shorelines to an area which is unnaturally shallow. It has promoted the growth of really unpleasant algae. There are beaches that are so stinking that people have sold their cottages. We have had people move to our beach, which is lucky enough so far to still have water on its littoral, but areas that had rock have just had this awful thing happen to them. It has promoted all sorts of unpleasant side effects. Wells are beginning to go dry, the water table is dropping. It’s very serious.

**Mr. Tabuns:** Thank you very much for the presentation and for citing me.

**Ms. Grant:** I didn’t realize you were going to be here.

**Mr. Tabuns:** I didn’t realize I was going to be cited.

The impact that you’ve described is consistent with what other people have had to say. Are the cottagers, the local residents, organizing politically—obviously you’re here—to push this point? I’m fearful that without a lot of political pressure, the diversions will continue.

**Ms. Grant:** We didn’t even realize it was happening. Had I not received a phone call last week, I wouldn’t have known to be here. It’s not something that we ordinarily regard ourselves as having a place to speak on.

I would very much like to know how one continues to make the point that it is just devastating if major amounts of water get shifted from one watershed to another.

I’m really concerned about York region’s intentions. I see no reason why mere money and building a proper sewage system within its own watershed are things that shouldn’t be required. It should just be a cost of that development.

**The Vice-Chair:** Thank you very much. Mr. Leal?

**Mr. Leal:** Ms. Grant, thank you so much for your presentation today and your obvious passion and great interest in this issue. You touched upon the destruction of a wetland in your area around Georgian Bay. What would your view be of a group of individuals who would deliberately drain a wetland in order to destroy the flora and fauna?

**Ms. Grant:** I’d be appalled. I have experienced what happened when a developer on my own street in Toronto decided he wanted to put up a tall building, moved in a motorcycle gang and wrecked two Victorian houses. It’s the same thing: You go out there and ruin something.

**Mr. Leal:** Thanks so much.

**The Vice-Chair:** Thank you, Ms. Grant, for appearing before us today.

## REFRESHMENTS CANADA

**The Vice-Chair:** Our final presenter is Refreshments Canada, Anthony van Heyningen. Mr. van Heyningen, thank you very much for appearing before us. You have 10 minutes in which to make your presentation. If you use up the entire 10 minutes, then there will be no opportunity for comments or questions from members of the committee. Before starting, if you would please identify yourself for the record, and then proceed.

**Mr. Anthony van Heyningen:** Good morning and thank you, Madam Vice-Chair. Good morning, members of the committee. My name is Anthony van Heyningen. I am the interim executive director of Refreshments Canada, which is the national trade association representing the non-alcoholic beverage industry. Our members make and distribute over 30 brands of carbonated soft drinks, bottled waters, juices, energy drinks and other non-alcoholic beverages.

Let me first start by stating that our members strongly support measures to protect and safeguard Ontario's water resources. The long-term interests of our members' operations depend on the sustainability of Ontario's water resources. We also fully appreciate that there are costs associated with using water. Like many others, Refreshments Canada members already pay for the water that comes into their manufacturing facilities via their local municipal water infrastructure.

Bill 198 proposes to explicitly clarify that the purpose of the Ontario Water Resources Act is "to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being." We support these objectives. We contend, however, that some of Bill 198's proposed amendments, in particular the related proposal for a regulatory regime on water conservation charges, will not meet those stated objectives on a number of fronts:

(1) The bill's restrictions regarding intra-basin transfers between Great Lakes watersheds must respect basic science. Nature transfers water from one watershed to another by evaporation, rainfall, by flow of surface water or by subterranean movement of ground water. In reality, the vast majority of the water used by our members that is drawn from Ontario's water resources is consumed in Ontario and is eventually discharged back into the surface waters of the Great Lakes basin through the municipal waste water systems. So the act should be seeking to ensure that water is not diverted in bulk out of the Great Lakes basin.

(2) Targeting only the industrial-commercial sector ignores 98% of the permitted water use and, as such, is not properly addressing conservation of Ontario's water. Specifically, subsection 16(1.6) of the bill proposes that water conservation charges only apply if "the person uses the water for commercial or industrial purposes...." Water can be used for many things, whether it's thermal cooling, irrigating crops, washing cars, canning fruit, making steel, generating power, making beverages, watering lawns etc. All that water eventually returns back into the hydrological cycle.

The Ministry of the Environment's own materials state that Ontarians are currently permitted to take about 495 trillion litres of water every year, yet the same ministry materials note that the commercial-industrial sector accounts for only 2% of the total permitted volume.

1200

Targeting just industrial and commercial users of water through application of any water conservation

measures, like volume charges, when they represent only 2% of the water use, ignores the other 98% of permitted water-takings. Not only is this totally inequitable, it means that any resulting conservation from those measures would be totally irrelevant if no conservation is achieved by the other 98% of water-takings.

If the true objective of the bill's proposed conservation charges is to conserve—in other words, to reduce the use of water—then there must be a level playing field for all users and uses. All uses of water should therefore be subject to the exact same conservation measures or charges. There should be no exemptions for any individuals or sectors. As section 16, subsection (1.6) would contradict this stated conservation objective, we feel that it should be deleted from the bill.

(3) Bill 198 targets quantity but really ignores quality, and as such is not properly addressing protection of Ontario's waters. It seems to be almost silent when it comes to protecting the quality of water.

The water that our members draw from municipal sources is further refined to the highest quality before incorporation into beverage products. The water used by our industry is one of the cleanest usages of Ontario's water resources. There are probably a lot of other water users that, unfortunately, cannot say the same thing about their use of the water. Many of those users return water into the ecosystem in a much-degraded condition compared to the quality that they initially withdrew.

If the true objective is to protect the quality of Ontario's water, then all uses and users of water should be evaluated on the basis of what condition they return water back into the Great Lakes basin.

(4) Beverage production and consumption is essentially "closed loop," and as such, targeting beverages does not properly address conservation of Ontario's water.

The government's related materials purport that the beverage industry is a highly consumptive user of water, and should thus be targeted for higher consumption charges and ahead of other water-using sectors. As I noted, beverage production is a highly efficient process, where virtually all the waters brought into the manufacturing facilities are incorporated into the beverage products. Those are later consumed by Ontarians. Basic human physiology means all of that water eventually ends up back in the Great Lakes basin, after, of course, fulfilling the very important role of physically sustaining the Ontarians who drink those products.

The beverage industry uses less than 0.0004%, or four one-hundredths of 1%, of that annual 495 trillion litres of permitted water-takings in Ontario. As I also previously noted, our members already pay for the water that they use via their local municipal water infrastructures.

I must also point out that the starting point, and in fact the cycle that it goes through, is exactly the same for domestically used tap water and our refreshment beverage products. There is therefore no basis for treating one any differently than the other. We then note that it is

incorrect to categorize the beverage industry as being any more consumptive than any other use of Ontario's water resources.

Again, if the true objective is to reduce the use of water, then we contend that there should be a level playing field for all, where all users of water are subject to the same conservation charges.

In closing, while we support the overarching objectives of the act, we feel that this bill needs a serious overhaul to be more effective and equitable. The Ontario Water Resources Act needs to establish a level playing field that ensures equitable treatment of all users of Ontario's water resources, irrespective of the source or the use of those waters.

I know that neither Refreshments Canada nor our members were consulted prior to the introduction of this bill. We also feel that a 30-day comment period has been insufficient for evaluating a matter of this scope and importance. We are further disappointed that the government has moved time allocation on this bill.

For this reason and others that I've outlined this morning, we recommend that the committee instruct the government to conduct further analysis and research on the issue of water-taking and application of conservation charges before Bill 198 is returned to the Legislature for third reading.

I thank you for allowing me to appear before you today.

**The Vice-Chair:** Thank you very much, Mr. van Heyningen. We have two minutes, so that's not quite a minute for each party. The rotation starts with the third party.

**Mr. Tabuns:** Sir, thank you for coming in today and making this presentation. Can you tell us the financial impact of the water charge on the industry?

**Mr. van Heyningen:** It's not so much the financial impact of the water charge as the equity of having conservation measures that are going to be effective in preserving our water resources and, as such, the beverage sector and the other industrial-commercial sectors should

not be the ones that are bearing the full burden of protecting those water resources.

**Mr. Tabuns:** I understand the argument that you're making, but I'm still curious: What is the financial impact on your sector?

**Mr. van Heyningen:** It is a small portion compared to the price that our members already pay for the water that they use when they get it through the municipal infrastructure, but by the same token, if people are drawing it from ground sources, they aren't paying anything other than the fees for their permit to take water. What's being proposed under the accompanying materials is that all commercial-industrial users will pay, regardless of whether they're taking from source or taking from municipality, and I would contend that our members are already paying their fair share of water use through their municipal rates.

**Mr. Leal:** I want to thank you for your very detailed presentation this morning, and rest assured that the Minister of the Environment will take your concerns into consideration as we move forward.

**Ms. Scott:** Thank you for appearing before us today. I agree with your comments that there was not enough time for consultation and that we're rushing this through. Maybe I should say to the members of the government that there are two big parts of this bill—it's a Ministry of the Environment bill and a Ministry of Natural Resources bill—and maybe they should look at separating them because we've heard from several presenters that there wasn't enough time to do some proper consultation with respect to charges for taking water and obviously the industry had not been consulted. That's been a constant theme through here, so maybe separation of that portion of the bill and the Great Lakes-St. Lawrence waterway section—I just add that into the record.

**The Vice-Chair:** Thank you, Mr. van Heyningen. The committee will be meeting again on May 16 at 9 a.m. to consider clause-by-clause.

I want to thank all the presenters, committee members and staff.

The committee meeting is adjourned.

*The committee adjourned at 1208.*



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## CONTENTS

Wednesday 9 May 2007

<b>Safeguarding and Sustaining Ontario's Water Act, 2007, Bill 198, Ms. Broten /</b>	
<b>Loi de 2007 sur la sauvegarde et la durabilité des eaux de l'Ontario,</b>	
<b>projet de loi 198, M<sup>me</sup> Broten .....</b>	<b>JP-1257</b>
Ontario Waterpower Association .....	JP-1257
Mr. Paul Norris	
Canadian Bottled Water Association .....	JP-1259
Ms. Elizabeth Griswold	
Pollution Probe, Ottawa .....	JP-1260
Mr. Rick Findlay	
Sierra Club of Canada, Ontario chapter .....	JP-1262
Mr. Tim Morris	
Georgian Bay Association .....	JP-1263
Ms. Mary Muter	
Great Lakes and St. Lawrence Cities Initiative .....	JP-1265
Mr. Brian McMullan	
Canadian Environmental Law Association .....	JP-1267
Ms. Sarah Miller	
Ontario Federation of Agriculture .....	JP-1268
Mr. Don McCabe	
Ontario Sewer and Watermain Construction Association .....	JP-1270
Mr. Frank Zechner	
Federation of Tiny Township Shoreline Associations .....	JP-1272
Ms. Judith Grant	
Refreshments Canada .....	JP-1274
Mr. Anthony van Heyningen	



JP-44

JP-44

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## **Legislative Assembly of Ontario**

Second Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 14 May 2007**

# **Journal des débats (Hansard)**

**Lundi 14 mai 2007**

## **Standing committee on justice policy**

Provincial Advocate for  
Children and Youth Act, 2007

## **Comité permanent de la justice**

Loi de 2007 sur l'intervenant  
provincial en faveur des enfants  
et des jeunes

Chair: Lorenzo Berardinetti  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Monday 14 May 2007

Lundi 14 mai 2007

*The committee met at 1105 in room 228.*PROVINCIAL ADVOCATE FOR  
CHILDREN AND YOUTH ACT, 2007LOI DE 2007 SUR L'INTERVENANT  
PROVINCIAL EN FAVEUR DES ENFANTS  
ET DES JEUNES

Consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth / Projet de loi 165, Loi visant à créer la charge d'intervenant provincial en faveur des enfants et des jeunes et à y pourvoir.

**The Chair (Mr. Lorenzo Berardinetti):** It now being 11 o'clock, I call this meeting of the standing committee on justice policy to order. Good morning, everybody. Welcome to the committee. The order of business is clause-by-clause consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth. What we're going to do is, we're going to go through it clause-by-clause and vote, members of committee, and we'll exclude that one section for now because we have to vote on all the other ones. But I understand there's a motion coming on one section. I think there's a motion in front of everybody that has been received from the office of the clerk.

Are there any additional motions, comments or questions a member would like to table now?

**Ms. Andrea Horwath (Hamilton East):** Can I just ask: Once the motion is on the table, we can discuss it a little bit—is that right?

**The Chair:** That's right. But we have to vote on the other ones. We go through each section.

What I'll do is ask the first question, which is: Is there any debate on sections 0.1 through 16, inclusive, of the bill?

**Ms. Horwath:** I just want to briefly raise once again my concerns that are outlined in sections 13 and 14 and the sections around access to information. From my perspective, there's still a real problem with the advocate's ability to get records provided and information provided by service providers, as well as the fact that the government's still prepared to go forward in not allowing deaf children to have the same level of advocacy as provided to other children in the province. Those are two major flaws in the bill that are contained in the sections

mentioned that I still have concern with. I think it's appropriate to put that concern on the record.

Having said that, I raised it last time around. It's problematic, but on balance, I'll be supporting it because I think the bill needs to go forward.

**The Chair:** Thank you. Further debate? I will now put the question. All those in favour of sections 0.1 through 16 of the bill? Opposed? It's carried.

There's a new section, 16.1. There is a motion in front of us. Would somebody like to move that motion?

**Mr. David Zimmer (Willowdale):** I move that the bill be amended by adding the following section:

"Duty to permit advocate to enter

"16.1 If the advocate seeks to enter the premises of an agency or of a service provider to communicate with children or youth, the agency or service provider, as the case may be, shall permit the advocate to do so."

In plain language, what that means is that there's a new obligation on agencies or service providers to allow the advocate to enter the premises of the agency or service provider to communicate with children or youth upon the request by the advocate. We've taken the unusual step of reconvening this standing committee on justice policy to address an unanticipated concern that arose in relation to the amendments that we made previously to improve access by the advocate to children and youth. The two amendments that were made in clause-by-clause at our last sitting were: first, to strengthen the obligation on agencies and service providers by requiring them, without reasonable delay, to provide the advocate with private access to a child in care and reasonable private access to a young person in custody; and second, the clause requiring the advocate to provide notice to agencies or service providers that he was planning to enter a place to communicate with the child or youth was struck out.

Since then, a concern has been raised that the elimination of the clause leaves the bill silent on the advocate's ability to enter the premises of agencies and service providers. In response to that concern, we've proposed to add a new obligation on agencies and service providers that clarifies, in unmistakable language, that there will be a requirement to allow the advocate, on request, access to the premises of those same agencies and service providers for the purpose of communicating with the children or youth and that no notice will be required.

As I say, that's a concern that developed after our last clause-by-clause session here. I hope I'm not putting

words into the mouths of the opposition critics, but as I understand it, you're supportive of this amendment.

**The Chair:** Thank you, Mr. Zimmer. Is there any further debate?

**Ms. Horwath:** I have been made aware that this was coming forward and I'm going to support it, because I think it's important to be clear about the advocate's ability to enter a premises for the purposes of communicating with children. I still am concerned, though, that that clear ability and opportunity does not exist in this bill for the advocate to obtain information, records and documents from service providers per se. It's a huge problem. I'm quite disappointed that the government didn't see fit to fix that problem, but I know it still exists. I don't know how you do a systemic review without having as-of-right access to records and information from service providers that are part of the system that needs to be reviewed. I'm still very, very concerned about that. I'll leave it at that because that's more in line with the issue around the advocate's access to premises.

**Mrs. Christine Elliott (Whitby-Ajax):** While we do share the concerns that Ms. Horwath has just indicated, we also will be supporting this amendment because it does state, in very clear and unmistakable language, that the advocate shall be permitted to enter.

**The Chair:** Mr. Ruprecht?

**Mr. Tony Ruprecht (Davenport):** Yes, Thank you very much. I thought that, Ms. Horwath, when you spoke earlier about not knowing what happened in sections 13 to 18—is that the section you referred to earlier?

**Ms. Horwath:** No. The sections I was talking about earlier—13 and 14—are around the issue of deaf children and that the bill provides a two-tiered response to deaf children. They don't get the same kind of advocacy rights as other children in the bill the way it's written now.

**Mr. Ruprecht:** Thank you very much. That clears up one question. The other one is: In terms of these amend-

ments, the amendments in 16, did you say that you weren't aware of them before?

**Ms. Horwath:** No, I was aware of them. I knew that this was coming. I've seen the resolution. Sorry.

**Mr. Ruprecht:** You were; okay. Thank you.

**The Chair:** I will now put the question. Shall the new section, 16.1, carry? All those in favour? Opposed? Carried.

Is there any debate on the remaining sections, 17 through 25, inclusive, of the bill?

**Ms. Horwath:** Just around the issue of section 18, which is the information and privacy piece, my understanding is that there's still some considerable concern from stakeholders, including the child advocate that we currently have in the province of Ontario, around this particular piece. It speaks to, first of all, young people not even being able to understand really what it says, and it's supposed to be for their benefit. Also, there are issues around access to information from a systemic perspective. So I wanted to again put that on the record. I think it is an important function. We are tying the hands of the advocate if we can't have her or him deal with the access to documents that they need for systemic review.

**The Chair:** Any further debate? I'll now put the question. Shall sections 17 through 25, inclusive, carry? All those in favour? Opposed? Carried.

We'll move down to the title. Shall the title of the bill carry? All those in favour? Opposed? Carried.

Shall the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

If there is no other business, do I have a motion to adjourn? Ms. Van Bommel, thank you. Mr. Ruprecht, thank you. All in favour? Opposed? Carried. Thank you.

*The committee adjourned at 1114.*







## CONTENTS

Monday 14 May 2007

<b>Provincial Advocate for Children and Youth Act, 2007, Bill 165, <i>Mrs. Chambers</i> / Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes, projet de loi 165, <i>M<sup>me</sup> Chambers</i> .....</b>	<b>JP-1277</b>
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JP-45

JP-45

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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 16 May 2007

# Journal des débats (Hansard)

Mercredi 16 mai 2007

## Standing committee on justice policy

Safeguarding and Sustaining  
Ontario's Water Act, 2007

## Comité permanent de la justice

Loi de 2007 sur la sauvegarde et  
la durabilité des eaux de l'Ontario



Chair: Lorenzo Berardinetti  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 16 May 2007

Mercredi 16 mai 2007

*The committee met at 0903 in room 1.*SAFEGUARDING AND SUSTAINING  
ONTARIO'S WATER ACT, 2007LOI DE 2007 SUR LA SAUVEGARDE ET LA  
DURABILITÉ DES EAUX DE L'ONTARIO

Consideration of Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act / Projet de loi 198, Loi visant à modifier la Loi sur les ressources en eau de l'Ontario afin d'assurer la sauvegarde et la durabilité des eaux de l'Ontario, à apporter des modifications connexes à la Loi de 2002 sur la salubrité de l'eau potable et à abroger la Loi sur le contrôle des transferts d'eau.

**The Vice-Chair (Mrs. Maria Van Bommel):** I'd like to call this meeting to order. Good morning, everyone, and welcome to this meeting of the standing committee on justice policy. The order of business is clause-by-clause consideration of Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act.

Members have before them a package of motions that have been received by the office of the clerk. Pursuant to the time allocation order of the House dated Tuesday, April 24, 2007, the committee is authorized to sit in the morning and after routine proceedings today until completion of clause-by-clause consideration of the bill. Are there any questions or comments that a member would like to make now? Then we'll commence the clause-by-clause.

Parliamentary practice has us deal with the preamble after dealing with the rest of the bill, so we will begin with section 1 and return to the preamble after dealing with the rest of the sections. If I could start with section 1, are there any comments, questions or amendments?

**Mr. Robert W. Runciman (Leeds-Grenville):** I have an amendment, and I gather—I'm looking for direction from the clerk on this with respect to subsection 1(3) of the bill, subsection 1(6) of the Ontario Water Resources Act. This addresses the concerns of Invista and others, I gather. I didn't have a specific wording

from Invista. I'm assuming that this will completely address their concerns.

*Interjection.*

**Mr. Runciman:** All right, then.

I move that subsection 1(6) of the Ontario Water Resources Act, as set out in subsection 1(3) of the bill, be struck out and the following substituted:

"Lost water

"(6) For the purposes of this act, if water is taken from a water basin described in subsection 34.3(1), any portion of the water that is not returned to that basin is lost."

**The Vice-Chair:** Would you like to add the rationale to that?

**Mr. Runciman:** Yes. Very briefly, I gather numerous submissions with respect to this have come from a number of organizations and businesses, but my interest is primarily sparked by a company in my riding, Invista, formerly a DuPont property and one of the major employers in my part of eastern Ontario with 400 employees. They have written to me with respect to the bill and the legislation, the impact that, if unchanged, this could have on their ability to compete. Madam Chair, with your indulgence, I would briefly put their concerns on the record. This is a company that does strive for environmental excellence.

"The government of Ontario"—and I'm quoting from their letter—"indicated that it is proceeding carefully with the introduction of charges for water takings. Given the potential trade implications, the need to promote a strong economy in Ontario and the importance of being competitive with other jurisdictions, the charges have the potential to further reduce the hospitable nature of Ontario's business environment relative to other sites in which Invista is located around the globe. An appreciating Canadian dollar, high energy prices and low-cost labour in some parts of the world result in an increasingly competitive global marketplace. It is with this premise, along with the fact that Invista returns virtually all of the water it uses in as good or better condition, that it would only be fair and reasonable for there to be an exemption for water charges for water that is returned to the environment in this manner.

"While we recognize the need for the government ... to protect the natural resources ... and for Ontario to meet its obligations under the Great Lakes water agreement, Invista believes that Ontario must do so in a responsible manner that does not unfairly penalize companies that

borrow and return water for manufacturing processes, particularly when such water is returned with a net benefit....

"One of the primary reasons Invista manufacturing operations were established in eastern Ontario was the access to large volumes of deep, cold water. The vast majority of this water is 'borrowed' from the source and used as a cooling agent for our manufacturing processes. For example, at just one of our manufacturing sites, we borrow approximately 250 million litres of water a day from the St. Lawrence. Of this total, only 22,000 litres is actually consumed in the production of product.

"Invista seeks the following recognition in the development of ... regulations:"

To "recognize the difference between consumptive and non-consumptive use in terms of the water-taking fees such that the non-consumptive users are not unfairly charged" and that it does not become "a significant cost burden. This is a significant concern for Invista, which borrows large volumes of water for cooling purposes....

"Groundwater pumping that is specifically used for remediation purposes should be exempt from the proposed water conservation obligations, including paying the proposed charges. This is water that is merely transferred from the ground to the lake after treatment, and this water would have eventually made its way to the lake anyway.

"Invista is pleased that the government ... recognizes the need to promote a strong economy in Ontario and be competitive with other jurisdictions. The addition of a water charge levied against Invista Canada's operations is counter to this position. Invista operates in a fiercely competitive global marketplace, and a charge on Invista's non-consumptive water use for manufacturing purposes would weaken our ability to compete in the global marketplace."

I think in essence that sums it up. As all members know, we are in a difficult situation currently with the loss of manufacturing jobs in the province. This is a company that's very much important to my region: 400 jobs with an implication for probably another 1,200 jobs or more that are reliant on the continued existence of this firm. If this company goes down, there's another firm, Nitrochem, which is a neighbouring company which employs close to 200 people, and another firm which is tied in. They're all tied in in this chemical lane, if you will.

So this, I would say, is of grave significance, and I certainly urge the members of the committee to support this amendment.

**The Vice-Chair:** Thank you, Mr. Runciman. Debate?

**Mr. Jeff Leal (Peterborough):** The definition, of course, of consumptive use was first enshrined in 1980 and in the Great Lakes Charter of 1985, which was one of the first international agreements that was signed by the then Prime Minister, Mr. Mulroney. Consumptive use was again reaffirmed by the International Joint Commission in its 2000 report *Protection of the Waters of the Great Lakes*, which talked about both diversions and consumptive use.

0910

Consumptive use is a key principle of this bill. Even if water is returned, the resource needs to still be managed.

We take the concerns put forward by the member from Leeds-Grenville seriously, but the notion of consumptive use remains a very critical part of this bill, and we won't be supporting this motion at this time.

**Mr. Peter Tabuns (Toronto-Danforth):** I would appreciate it if Mr. Runciman could explain again why this amendment—maybe I missed the point. If, in fact, you say that any water not returned to the basin is lost, how does that aid your purpose?

**Mr. Runciman:** As I understand it, they're looking at the non-consumptive use; the definition being applied with respect to water that's being used for cooling purposes and then is returned to the waterway. That's why I questioned the Chair and the clerk with respect to whether the amendment addressed the concerns of Invista, and I was assured that it did by my colleague and the clerk and, I hope, the researcher. Perhaps legal counsel can speak to this.

**Mr. Doug Beecroft:** The motion that really accomplishes what you want is on page 40, but this motion is necessary to make that motion work. If you look at the motion on page 40, you'll see that there you're amending the provision that relates to the water conservation charges, and you would only permit charges for commercial-industrial purposes that result in a loss of water. Here in this motion that you've just moved, you're defining loss of water to mean a transfer that is not returned in full.

**Mr. Runciman:** What you're saying is that by rejecting this amendment that I just moved, this is lost automatically?

**Mr. Beecroft:** I wouldn't say that, except that your later motion wouldn't have as clear a meaning. The motion that you've just moved gives some clarity to the later motion. I think you can still try—it's a later motion—but it wouldn't be as clear in its meaning.

**Mr. Runciman:** I wonder if the government wants to respond to that to give us an indication.

**Mr. Leal:** I'll have a staff person from MOE respond.

**The Chair (Mr. Lorenzo Berardinetti):** Would you please come up? Can you state your name, please?

**Mr. James Flagal:** My name is James Flagal. I'm a lawyer with the Ministry of the Environment, legal services branch.

If you look at the provision of the bill which deals with the charges authority, there's actually no reference to consumptive use. The regulation-making authority itself says that charges can be imposed on commercial-industrial users or also on persons who take water and then pass it on to a commercial-industrial user. Plus, there's a motion that's being proposed that this also include persons who distribute water and pass it on to a commercial-industrial user.

The reason I point this out is just because consumptive use comes up in other provisions of the bill, such as defining what types of large transfers require review by the regional body and return flow.

The ministry's discussion paper that was posted that will lead to a proposed regulation says that the first phase for the charges would go to the commercial-industrial users who are defined as highly consumptive users, but you are right that the paper proposes that at some point the charges will apply to the larger commercial-industrial sector. These are things—what I'm trying to indicate here—that will be proposed by regulations: how you calculate a charge, to whom it applies in the commercial-industrial sector. Those will be things that will be specified in the regulation.

**Mr. Runciman:** So, Chair, if I get this right, then what you're saying is that there's still the flexibility through the regulatory process to exempt firms that are returning water—

**Mr. Flagal:** You—I'm so sorry to interrupt. I wouldn't call it an exemption, because—it's a way you can describe it. The regulation will say it applies to these people. For instance, it may say that it will apply to beverage manufacturers first, plus maybe some other highly consumptive users. What you're identifying is exactly right. Every time a new regulation comes forward, if it's going to expand the commercial-industrial users it will apply to, there will always be an opportunity for stakeholders to discuss and negotiate with the ministry what that proposal should be. So you're exactly right. This is something that would be addressed in regulation, and it would be part of the consultation process that the ministry always follows through the EBR process when going out with proposals for regulations.

**Mr. Runciman:** I guess that won't provide much comfort to—it still leaves a large cloud of uncertainty hanging over this issue.

**Mr. Flagal:** I understand that. We're hoping, though, that through regulation-consultation processes—it's the ministry's attempt to say to the stakeholders that are affected, "This is what our proposal is," and then to try to hone that proposal to be reasonable, etc. I understand what you're saying, but it's not something that would come out of the blue, so to speak, for the commercial-industrial users. It would be something they'd be consulted on. If, for instance, these folks are only using it for cooling water—I don't know much about their operations; I'm sorry—but if it is for cooling water purposes, then before the regulation would apply to them, they would be consulted along with other stakeholders about the expansion of that particular charging regime.

**The Chair:** Thank you. Are there any further questions?

**Mr. Tabuns:** Either to counsel or to Mr. Flagal, regarding the effect of this amendment, can you tell us how it would alter the legislation if this amendment was adopted? Why don't we start with legislative counsel and then go to the ministry.

**Mr. Beecroft:** The concept of consumptive use, as Mr. Flagal has said, comes up in various places in the bill. In all of those cases, the PC motions would change that concept of consumptive use to just any kind of loss of water. In addition, they would put this additional

prohibition on the charges that can be imposed so that those charges could not be imposed on someone who returned all the water to the basin they took it from.

**Mr. Tabuns:** Any difference of opinion?

**Mr. Flagal:** The only thing I can add, which the parliamentary assistant already identified, is that the legislation tried to track closely what the international joint commission definition of "consumption use" is, plus what's in the charter.

**Mr. Tabuns:** Fine. Thank you.

**The Chair:** Thank you. Mr. Leal.

**Mr. Leal:** Just a question to MOE counsel, then: If we change the notion of consumptive use—the Great Lakes Charter was signed by eight Great Lakes states and two provinces. Potentially it would have to go back to those bodies for approval because the Ontario legislation would be out of sync with what was incorporated and enshrined in the agreement of 1985.

**Mr. Flagal:** When we were given instructions to develop this particular legislation, the instructions were to make sure to enshrine in the legislation the commitments of the province and the commitments of the parties to the agreement, and that's why you see this definition of consumptive use. So that's why it tracks very closely what that is. But you will hear later on with respect to motions that there are already provisions in the bill; that there are abilities through the legislation to be even more stringent than what is provided for in the agreement. I'll give you an example. A big issue was return flow: When is return flow required when there's a transfer? There are mechanisms available to require return flow beyond those that are contemplated in the agreement. The answer is yes: The whole point with respect to this legislation was to try to enshrine as closely as possible, at a minimum, the provisions of the agreement.

0920

**Mr. Runciman:** I would like to make a request to the research folks. It would be interesting to know how the other signatories to this have interpreted this issue, especially in terms of a competitive marketplace. They're the folks we tend to be competing with to a significant degree. I think it would be helpful to see if they're treating this in a dramatically different way.

**The Chair:** Usually the research person is here.

**The Clerk of the Committee (Ms. Anne Stokes):** So the signatories to the agreement—

**Mr. Runciman:** This Great Lakes agreement.

**The Chair:** How they interpret "consumptive use." Thank you. We'll get an answer to that.

**Mr. Leal:** We also have staff here this morning from the Ministry of Natural Resources. They were working with staff from MOE on this bill. There may be some questions for MNR staff down the road.

**Mr. Flagal:** Yes, there is counsel here, whom I'll turn it over to, who was involved with respect to the negotiation of the agreement. Just one second.

**Ms. Leith Hunter:** Good morning. My name is Leith Hunter. I'm the deputy director of the legal services branch of the Ministry of Natural Resources. I acted as

counsel to the government during the negotiation of the agreement.

The agreement is a 10-party agreement. In the States, there is something called a compact, which is a binding agreement between the eight Great Lakes states, which needs to be approved in each of the Legislatures of the states and then will go to Congress and be approved by Congress.

The approval process has begun in the Great Lakes states. I think Minnesota has actually approved it. It has started in various other states, with varying levels of approval. What is being done there, largely, is that the compact is being adopted as drafted. It was drafted to be legislation. It's largely being adopted.

**Mr. Runciman:** Adopted? You mean implemented?

**Ms. Hunter:** Yes. There may be two stages in some of the states. They may actually approve the compact, and then, when it's approved by Congress, they may actually go and amend other legislation in their states to help in the implementation.

The compact, as drafted and approved, has this concept of consumptive use in it. The definition here flows from the agreement and from the compact.

**Mr. Runciman:** The question that flows from this is: Is there a commitment that we won't be ahead of the curve in the sense that if there are 10 signatories to this, does this have to be finalized before this definition that you're implementing in Ontario comes into use and starts to impact, and we'd have maybe one state in this compact that has implemented it, or do we have to have everybody on board before it actually takes effect?

**Ms. Hunter:** The answer to that is that the agreement is not fully effective until all of the jurisdictions have passed legislation to approve it. It's a bit of a running target, so you want to indicate that you are there approving the agreement, but you also want to ensure that some of the provisions don't come into force until there has been substantial approval elsewhere. As you read the bill as drafted, you'll see that—particularly, for instance, with respect to the in-basin uses, how we're going to manage water takings in the basin that aren't transfers—that is something which will be done later by way of regulation. The hope is that that will be done at a time that is appropriate in terms of what other jurisdictions are doing in the basin. The other thing I'd like to add is—

**Mr. Runciman:** Did you use the word "hope"?

**Ms. Hunter:** That is the intention. The other thing I'd like to add is that the concept of consumptive use is important in that context as well.

**Mr. Runciman:** I think it's important, when maintaining a manufacturing base in this province, that we don't get way out ahead of folks, especially if we're talking about water that's recycled into the water basin. Being ahead of the curve on an issue like this when we're seeing a hollowing out of the manufacturing sector in the province is pretty scary policy, in my view.

**The Chair:** Any further comments or questions or debate? None? I'll put the question.

Shall the motion carry? All those in favour? Opposed? It does not carry.

We'll move on to number 2 here. It's a government motion.

**Mr. Leal:** I move that section 1 of the bill be amended by adding the following subsection:

“(5.1) The act is amended by adding the following section:

“Order relating to flowing water, etc.

“33.1(1) The director may issue an order described in subsection (2) to a person described in subsection (3) if the order is necessary, in the opinion of the director, for the purposes of this act, and,

“(a) water is flowing, leaking or being released from, or is likely to flow, leak or be released from, any well or other hole or excavation in the ground; or

“(b) water is being diverted by, or is likely to be diverted by, any well or any other hole or excavation in the ground.

“Types of orders

“(2) The order may require the person to whom it is issued, in such manner and within such time as may be set out in the order,

“(a) to stop, prevent, regulate or control the flowing, leaking, release or diversion of water; or

“(b) to study or monitor the flowing, leaking, release or diversion of water, to make records of the results of the study or of the monitoring, and to report the results to the director.

“Person

“(3) The order may be issued to,

“(a) the person who owns the land on which the well, hole or excavation is located;

“(b) the person who constructed or caused the construction of the well, hole or excavation; or

“(c) the person who manages or controls the well, hole or excavation.”

**The Chair:** Any comments on that? Any discussion at all on the amendment? None? Then I'll put the question.

Shall the motion carry? It's carried.

Let's move on to page 3, a government motion.

**Mr. Leal:** I move that section 1 of the bill be amended by adding the following subsection:

“(5.2) Subsection 34(3) of the act is repealed and the following substituted:

“Water taking

“(3) Despite any other act, a person shall not take more than 50,000 litres of water on any day by any means except in accordance with a permit issued by the director.

“Exceptions

“(3.1) Subsection (3) does not apply to the following takings of water unless they are prescribed by the regulations:

“1. A taking of water by means of a well that was constructed before March 30, 1961 and was not reconstructed, improved, deepened, altered or replaced on or after that date.

“2. A taking of water by means of an intake from a surface source of supply, if the intake was installed before March 30, 1961 and was not reinstalled, reconstructed, improved, extended, altered or replaced on or after that date.

“3. A taking of water by means of a structure or works for the diversion or storage of water, if the structure or works was constructed before March 30, 1961 and was not reconstructed, improved, extended, altered or replaced on or after that date.

“4. A taking of water by any combination of the means referred to in paragraphs 1, 2 and 3.

“Exception, application for permit

“(3.2) When a person takes water by a means described in subsection (3.1) and the water taking is prescribed by the regulations, subsection (3) does not apply to the person if the person has applied to the director for a permit and the application has not yet been finally disposed of.”

To give a brief rationale, this amendment would allow regulations for charges and regulations requiring grandfathered takers to obtain a permit to be implemented together. If the bill is passed, as part of the government's plan for imposing regulatory charges on highly consumptive, industrial and commercial uses of water, the government intends to make a regulation requiring all grandfathered water takers that fall within this class of water users to obtain a permit, in part so that their water use can be monitored and, consistent with trade law, similar uses of water should be treated similarly. As a result, currently grandfathered water users should be charged for water use similar to permanent water users.

**The Chair:** Further debate? Seeing none, I'll now put the question. Shall the motion carry? Carried.

We'll move on to page 4, a government motion.

0930

**Mr. Leal:** I move that subsection 1(6) of the bill be amended by striking out the portion before section 34 of the Ontario Water Resources Act and substituting the following:

“(6) Section 34 of the act, as amended by subsection (5.2), is repealed and the following substituted.”

This motion is a consequential motion to the motion that would add the authority to the existing section 34 of the Ontario Water Resources Act to require, by regulation, grandfathered water takers to obtain a permit. This will allow the government to have this authority in place when the bill receives royal assent.

**The Chair:** Any further debate? Seeing none, I'll now put the question. All those in favour of the motion? Opposed? Carried.

We'll move on, then, to page 5. It's a PC motion.

**Ms. Laurie Scott (Haliburton–Victoria–Brock):** I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

“4. The taking of water for construction safety purposes related to sewers and water mains.”

This amendment was brought forward to us by the Ontario Sewer and Watermain Construction Association and supported by other groups such as the Ontario General Contractors Association and the Council of Ontario Construction Associations. When they appeared before committee, they wanted an exemption for construction safety purposes. According to the Ontario Sewer and Watermain Construction Association, “underground water infrastructure construction often involves trenching or tunnelling at depths below the water table.... Water in a trench” or a tunnel “is a major safety hazard.” As well, “The cost and delays imposed by the need to prepare a detailed hydrological report and permit application ... can add huge costs to” already strapped municipalities.

**The Chair:** Is there any further debate?

**Mr. Leal:** We won't be supporting this motion. We've had ongoing discussions, of course, with the sewer and water main construction folks in Ontario. The current permit to take water has a great deal of flexibility to deal with cases of emergency, and takers for dewatering can contact the regional office if they encounter water unexpectedly during an excavation.

As a former city councillor, I have witnessed trenches that fill up from time to time due to unexpected circumstances that arise. I would also like to get on the record that the Ministry of Transportation has a memorandum of understanding to deal with road construction to facilitate expedited issuance of permits for contractors if emergencies do arise due to the flooding of trenches. And I want to get on the record that this government and all previous governments in the province of Ontario take worker safety very seriously, and we would do nothing that would jeopardize the safety of workers—men and women who go to their jobs each and every day in Ontario.

**Ms. Scott:** I just don't think that the comfort level for the Ontario Sewer and Watermain Construction Association was that—obviously, they appeared before the committee just last week. So I just wanted to put on the record that they still have some concerns. I hope the member opposite is correct that this will be covered off by the MTO MOU and with the permit to take water.

**The Chair:** Any other debate at all? None? So I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We move on to page 6, then. It's a PC motion.

**Ms. Scott:** I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

“5. The taking of water for irrigation purposes from a pond on land that is occupied by the person who takes the water.”

This amendment comes from the Ontario Federation of Agriculture, and they want it to be clear that the irrigation via personal ponds is not deemed as water-taking and irrigation from the ponds is done to alleviate the stress from other sources of water that they may face, especially in the drier summer months. So that was

brought forward by the Ontario Federation of Agriculture.

**Mr. Leal:** We won't be supporting this motion, but it was an issue that was brought forward by the Ontario Federation of Agriculture. I'd like to add that approximately half of the water-taking permits for agricultural uses, such as irrigation and frost protection—if irrigation from ponds was exempted from permanent requirements, the permit program would not be managing a large number of water takings and, as a result, would eliminate the program's effectiveness to manage water takings in a scientifically based and consistent manner right across the province.

**The Chair:** Any further debate? None? So I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to page number 7. It's a PC motion.

**Ms. Scott:** I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

"6. The taking of water by means of a dam or other structure or work for which a management plan has been prepared under section 23.1 of the Lakes and Rivers Improvement Act, or for which the Minister of Natural Resources is authorized to require the preparation of a management plan under that section."

This concern was brought forward by the Ontario Waterpower Association, and it's intended to reduce the overlap and red tape that those in the water power sector are faced with under the variety of different acts in the province of Ontario. It would exempt those in the industry from the sections surrounding permits to take water.

**The Chair:** Thank you. Any further debate?

**Mr. Leal:** This organization is headquartered in Peterborough, and I've had the opportunity to chat with Paul Norris on numerous occasions. Water power dams are currently required to obtain an approval from the Ministry of Natural Resources under the Lakes and Rivers Improvement Act, as well as a permit to take water from the Ministry of the Environment. The proposed motion would provide a permit-to-take-water exemption by taking the water by means of a dam or other structure for which the management plan is completed under the lakes and waters act. The two ministries are working together to streamline the process because certainly all of us are interested in developing run-of-the-river operations as clean and green energy, and with the structure in place currently, we feel that this particular motion is not necessary at this time.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move to page 8. It's a government motion.

*Interjections.*

**The Chair:** I'm sorry, my apologies. My counting wasn't accurate. Not carried. Sorry if I got your hopes up, Ms. Scott.

**Ms. Scott:** Yes.

**Mr. Dave Levac (Brant):** I wouldn't want Hansard to come back and bite us.

**The Chair:** Yes. Go ahead, Mr. Leal.

**Mr. Leal:** I move that section 34 of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following—I'm sorry. Since we've approved a previous motion, we want to withdraw this one.

**The Chair:** Okay, withdrawn then.

We'll move on to number 9. It's a PC motion.

**Ms. Scott:** I move that subsection 34.1(6) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"Delay in deciding application for renewal

"(6) If an application for the renewal of a permit is made at least 90 days before it expires or within the shorter period that is approved in writing by the director, and the director has not made a decision to renew the permit or to refuse the renewal by the expiry date, the permit is deemed to continue in force until the date the director makes a decision to renew the permit or to refuse the renewal."

The rationale for this was again from the Ontario Federation of Agriculture, and it removes the provision that the permits expire even if applied for on time, if a year passes by. If our farmers played by the rules and applied on time, they should not be punished because government is too slow in responding.

**The Chair:** Thank you. Any further debate?

**Mr. Leal:** I happen to think this is an excellent motion, and we'll be supporting it.

**Ms. Scott:** Well, thanks, Jeff.

**Mr. Levac:** I want it noted she is shocked herself.

**Mr. Leal:** I can't guarantee others, but I think this is a superb motion.

**Ms. Scott:** Okay.

**The Chair:** Any further debate? None? All those in favour? Opposed? Carried.

**Mr. Leal:** There we go.

**Ms. Scott:** One for the day. At least one, right? Thank you. We try to provide things that make sense.

**Mr. Leal:** It's common sense. We don't want to go back to that, but it is common sense.

**The Chair:** We'll move on now to page 10, a PC motion.

0940

**Ms. Scott:** I move that subclause 34.1(9)(h)(i) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by striking out "reduce the consumptive use of the water" at the end and substituting "reduce the loss of the water."

It goes back to our earlier discussion about the first motion, calling for the clarification of "water lost."

**The Chair:** Any further debate?

**Mr. Leal:** I'll be brief. Consumptive use is a key part of this bill. It's one of the founding principles articulated in this bill. We've had two legal counsel comment that this is a consistent principle that's enshrined by at least

two international agreements, and it wouldn't be appropriate for us to withdraw that concept based on the legislative commitments we've made to eight Great Lakes states and the province of Quebec.

**Ms. Scott:** I just want to put on the record again what was said earlier about not knowing for sure how the other signatories are interpreting the words "consumptive use" and thus, there is uncertainty for sectors of our province in that regard. I just want to put that on the record again.

**The Chair:** Any further debate? There being none, I'll put the question. Shall the motion carry? All those in favour? Opposed? That does not carry.

We'll move on then to page 11. It's a government motion.

**Mr. Leal:** I move that clause 34.1(9)(h) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"(h) governing the use and conservation of water taken under the permit, including requiring the holder,

"(i) to implement specified measures to promote the efficient use of the water or reduce the loss of water through consumptive use,

"(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently, and to provide the results of the audit to the director, to other persons or both, or

"(iii) to prepare a water conservation plan and submit it to the director, to amend the plan if required by the director, and to implement the plan."

A brief explanation: This motion would amend the authority of the director to require water conservation measures as a condition in a permit to take water by expressly authorizing the director to require the permit holder to prepare and implement the water conservation plans. This is something that was advocated by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes cities initiative and the Georgian Bay Association.

**The Chair:** Any further debate? If none, I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to page 12, a PC motion.

**Ms. Scott:** I move that section 34.2 of the Ontario Water Resources Act, as set out in subsection 1(8) of the bill, be amended by adding the following subsection:

"Agricultural purposes

"(3.1) An order shall not be issued to a person who takes water for agricultural purposes if the person would incur any costs associated with the monitoring required by the order."

Again, the amendment was brought forward by the Ontario Federation of Agriculture. Their concern was that many of the standard pumps are equipped now to pump 50,000 litres and therefore fall under the section of the act which calls for monitoring. The Ontario Federation of Agriculture disagrees with the use of pump capacity as a sole determinant for monitoring and requests that any costs associated with that monitoring be borne by the province, not by the farmer. We should be

looking at innovative ways to lighten our farmers' loads, not burdening them further. This is brought forward as a concern that they may be into more regulation and expenses.

**The Chair:** Further debate?

**Mr. Leal:** We won't be supporting this motion. It would limit the effectiveness of the permit-to-take-water programs and to manage water takings in a scientifically based and consistent manner. As with any legislation, we want to be consistent in its application across the province of Ontario.

**The Chair:** Any further debate? If there's none, I'll put the question. All those in favour of the motion? Opposed? That does not carry.

Let's move on to number 13. It's a PC motion. Ms. Scott.

**Ms. Scott:** I move that section 34.4 of the Ontario Water Resources Act, as set out in subsection 1(8) of the bill, be amended by adding the following subsection:

"Annual report

"(3) The minister shall report annually to the Legislative Assembly on progress on the implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005."

This amendment was put forward by Pollution Probe. They envisioned a tool that would allow citizens and decision-makers to see how the agreement is being implemented. We agree that this would be a great tool to see progress and analyze where more work can be done.

**The Chair:** Any further debate?

**Mr. Leal:** We won't be supporting this motion. If you examine article 300 of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, it commits Ontario and Quebec and the Great Lakes states to report to the regional body every five years, and then after that a public report is issued to provide transparency in what has occurred over that period of time.

**Mr. Tabuns:** I don't disagree that there's a provision in the agreement to report on a five-year basis, but there's nothing that prohibits us from reporting more frequently.

In fact, this is an amendment that would allow for greater openness and better ongoing monitoring, so I think it would be to the government's advantage, as well as to the advantage of Ontario as a whole, for it to be adopted.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on, then, to number 14. It's an NDP motion. Mr. Tabuns.

**Mr. Tabuns:** I move that clause 34.6(1)(a) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

"(a) any of the water, including any wastewater produced from the water, would be transferred; and."

The idea here is that we ensure that wastewater is not diverted into another basin.

There was certainly a concern on the part of a number of deputants who appeared before us and certainly a concern that I raised in the Legislature—as did, I believe, the opposition—that large-scale transfers can have a negative effect on different lakes in the Great Lakes basin. I think we have to be very vigilant on this, both because of its impact on the upper Great Lakes and also because of its long-term political impact on our relationship with American states whose support for our action is necessary to protect the Great Lakes from diversion to the southwestern United States or the southern United States.

I think we have to do everything we can to have very clean hands. This amendment is meant to reduce transfers. Actually, I want to eliminate transfers, but this is part of the process of making sure that the upper lakes are protected.

**The Chair:** Any further debate?

**Mr. Leal:** We won't be supporting this motion. Bill 198 already includes the return of sewage as a return flow and when there is a new or increased transfer of water from the Great Lakes watershed to another of 379,000 litres per day. Additionally, we have ongoing negotiations, because this impacts municipalities in this area, and part of the MOU with AMO is that we need to continue to have these negotiations. If this NDP motion was passed at this time, it would have implications for our municipal partners in the province of Ontario, which would be contrary to the MOU that we have signed with AMO on legislative impact on municipalities in Ontario. But I do take the point that Mr. Tabuns has made on this issue.

0950

**The Chair:** Any further debate? I'll now put the question.

**Mr. Tabuns:** A recorded vote.

**Ayes**

Scott, Tabuns.

**Nays**

Balkissoon, Leal, Levac, Oraziatti, Van Bommel.

**The Chair:** The motion does not carry.

We move on to number 15. It's a PC motion.

**Ms. Scott:** I move that clause 34.6(1)(a) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

“(a) any of the water, including any sewage produced from the water, would be transferred; and.”

This is a similar amendment to what has just been discussed by the NDP, Peter Tabuns. He made the points of the groups that came before us that encouraged this to be studied, and I heard the government side talking about the memorandum of understanding with the municipalities. Maybe we need to re-look at those.

Also, this group, the Georgian Bay Association, did their own study and found that 2.5 billion gallons per day, a previously unknown diversion, had been taken out of the St. Clair River, leading to the current low water levels in Lakes Michigan and Huron and in Georgian Bay. I think that it needs an update of the science and discussions, but it's the same rationale that was brought forward.

**The Chair:** Any further debate?

**Mr. Leal:** I would think this would be out of order because we voted down the previous NDP motion, which is identical, I believe.

**The Chair:** There is a difference, in that one dealt with sewage and one dealt with wastewater. I rule it in order.

*Interjections.*

**The Chair:** It is in order. Any further debate?

**Ms. Scott:** A recorded vote, please.

**Ayes**

Scott, Tabuns.

**Nays**

Balkissoon, Leal, Levac, Oraziatti, Van Bommel.

**The Chair:** The motion does not carry.

We move on, then, to page 16, an NDP motion.

**Mr. Tabuns:** I move that subparagraph 1i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out the portion before sub-subparagraph A and substituting:

“i. The new or increased transfer amount.”

I was very concerned and our researchers were very concerned when we went through this because we felt that consumptive amount could understate the amount that was actually transferred. I haven't tried to change the definition of “consumptive amount” earlier on in the act, but I would say that you can have transfers that may elude that term “consumptive amount” and that you need a stricter wording when it comes to the whole issue of transfers, for reasons that I went into on the previous amendment.

I would move that this amendment be adopted as a way of ensuring that transfers between basins are eliminated or, at best, minimized.

**The Chair:** Any further debate?

**Mr. Leal:** I take the point that Mr. Tabuns has made. I would respond, though, that Bill 198 implements the commitments of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, including the prohibition of water transfers from one Great Lake watershed to another, with strictly regulated exemptions. The government is currently actively engaging its stakeholder advisory panel in developing the proposed legislation and has responded to requests by some members for stronger restrictions on transfers between

the five Great Lakes watersheds in a number of ways: Number one, the draft legislation was modified to authorize stronger intra-basin transfer controls by regulation.

For example, the bill provides regulation-making authority to lower the threshold requiring the return of water to the source of the Great Lakes watershed and to introduce additional environmental criteria to respond to cumulative impacts and climate change effects. A commitment has been made to engage Ontario's annex advisory panel to dialogue on potential interim measures, should the legislation be enacted. The government has also committed to consult with stakeholders and the public in developing supportive regulations. I think that explains our position in terms of what we see as already contained in the proposed draft of the bill.

**The Chair:** Any further debate? None.

**Mr. Tabuns:** Recorded vote.

#### Ayes

Scott, Tabuns.

#### Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

**The Chair:** The motion does not carry.

We'll move on now to number 17. It's a PC motion.

**Ms. Scott:** I move that subparagraph 1i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out "that is lost through consumptive use" in the portion before sub-subparagraph A and substituting "that is lost."

Again, this amendment goes back to our first motion calling for the clarification of water lost.

**The Chair:** Further debate?

**Mr. Leal:** Clearly, there's a philosophical divide between the government and the official opposition in terms of this notion of consumptive use. We believe, as I said previously, that consumptive use is a fundamental principle of Bill 198. It needs to be retained to make it consistent with our other partners who want to move forward with the effective management of water within the Great Lakes basin and the St. Lawrence River basin. We will not be supporting it.

**Mr. Tabuns:** I think there's a philosophical divide, but frankly, what's here doesn't eliminate the term "consumptive use." It simply tries to eliminate transfers and, as I understand what's before us, tries to move us to a stricter standard than the term "consumptive use," which may not encompass all losses of water. So I would say that it doesn't violate the agreement, but it doesn't eliminate the concept of consumptive use. It deals with transfer and makes the whole process of transfer more difficult. On that basis, as we've gone through the debate, I think that it is worthy of support.

**The Chair:** Any further debate?

**Ms. Scott:** A recorded vote, please.

#### Ayes

Scott, Tabuns.

#### Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

**The Chair:** The motion does not carry.

We'll move on now to number 18. It's an NDP motion.

**Mr. Tabuns:** I move that subparagraph 1ii of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out.

As I said in the debate on second reading, there's real concern that the development of municipalities or new tracts of housing north of Toronto, the development of the big pipe, will lead to substantial diversions of water from Georgian Bay and Lake Huron, and an exemption from transfer to municipalities feeds that. I would say that anyone transferring water should be caught in the same regulations. Frankly, leaving a large loophole for municipalities could mean that rural areas and areas around the upper Great Lakes will be substantially disadvantaged. I've already made my argument about the need to maintain good faith with the American states with whom we are striking an agreement, and I think that this is the direction the government should be going in.

**The Chair:** Further debate?

**Mr. Leal:** The issue that Mr. Tabuns has raised is contained in previous NDP motions 16, 18, 19, 21, 22, 27 and 29. We've provided our rationale as to why we feel we can't support it. So, suffice to say, for reasons of brevity, I don't have to provide an additional explanation.

**The Chair:** Is this another philosophical divide?

**Mr. Leal:** Perhaps it is. "Philosophical divide" is a good word to use.

1000

**The Chair:** Any further debate? None.

**Mr. Tabuns:** Recorded.

#### Ayes

Tabuns.

#### Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

**The Chair:** The motion does not carry.

We'll move on now to motion 19. It's an NDP motion.

**Mr. Tabuns:** I move that paragraph 1 of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subparagraph:

"iv. Notice of the application for the permit or amendment has been given to the province of Quebec, the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of

Pennsylvania in accordance with the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.”

Again, this is an initiative to tighten the conditions for transfer between lakes in the Great Lakes basin as a way of protecting those Great Lakes.

**The Chair:** Any further debate? None.

**Mr. Tabuns:** Recorded.

### Ayes

Scott, Tabuns.

### Nays

Balkissoon, Leal, Oraziatti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to page 20, a PC motion.

**Ms. Scott:** I move that subparagraph 2 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that is lost through consumptive use” in the portion before sub-subparagraph A and substituting “that is lost.”

The amendment is going back to the result of the first motion that we brought forward.

**The Chair:** Any further debate?

**Mr. Leal:** We won't be supporting this motion. I think we've clearly outlined our position on the use of replacing consumptive use.

**The Chair:** Any further debate? None, so I'll now put the question.

All those in favour? Opposed? That does not carry.

We'll move on now to number 21. This is an NDP motion.

**Mr. Tabuns:** I move that paragraph 2 of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out.

This amendment is meant to prohibit intra-basin transfers, and it requires return of waters to their source basin. I think we've had the argument.

**The Chair:** Any further debate? None.

**Mr. Tabuns:** Recorded.

### Ayes

Scott, Tabuns.

### Nays

Balkissoon, Leal, Oraziatti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to number 22, an NDP motion.

**Mr. Tabuns:** I move that subparagraph 3 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out the portion before sub-subparagraph A and substituting:

“i. The new or increased transfer amount.”

Again, this is requiring return of water to its basin to avoid the difficulties, environmental and political, that arise from transfers.

**The Chair:** Any further debate?

**Mr. Tabuns:** Recorded.

### Ayes

Scott, Tabuns.

### Nays

Balkissoon, Leal, Oraziatti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to number 23. It's a PC motion.

**Ms. Scott:** I move that subparagraph 3 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that is lost through consumptive use” in the portion before sub-subparagraph A and substituting “that is lost.”

This again speaks to the clarification of water loss, as we've mentioned many times before in the committee.

**The Chair:** Any further debate? None, so I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on now to number 24. It's a PC motion.

**Ms. Scott:** I move that paragraph 1 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that may be lost through consumptive use” and substituting “that may be lost.”

Again, this is following the first motion that we brought forward.

**The Chair:** Any further debate? All those in favour of the motion? Opposed? That does not carry.

We will move on to number 25. It's an NDP motion.

**Mr. Tabuns:** I move that paragraph 1 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

“1. The new or increased transfer amount is returned, either naturally or after use, to the same Great Lakes watershed from which it was taken.

“1.1 The quality of the water that is returned is equal to or better than the quality of the water that was taken.”

The concern here, again, is to avoid transfers.

I want to speak briefly to this whole question of returning water in the same shape or in better shape than it was taken. Pressure on our water resources is only going to increase over the next few years. The quality of the water returned is of great concern.

I note two things:

One, in China, they are finding that their industrial growth is increasingly constrained by the fact that the water in their rivers is too low a quality even for industrial use. We never want to be in that situation, and setting a high standard now makes sense;

Secondly, we are going to find that quantity of water will increasingly be an issue. Friends of mine who live in the Kingston area are having their wells run dry. In the Picton area, wells are also running dry. Ongoing lack of precipitation over the years is starting to change the water table. We have to make sure that in a situation of constrained quantity, quality is protected; thus the amendment.

**The Chair:** Any further debate?

**Ms. Scott:** I would support that motion, because we heard from many of the people before the committee and during debate in the Legislature about the quality of the water and that this was not recognized in the bill and is something that really needs to be addressed.

**Mr. Leal:** We won't be supporting this motion. The bill already requires that proposals for large—greater than 19 million litres per day for consumptive use—new or increased takings of water between the Great Lakes watersheds are returned after use to the watershed from which it was taken.

The government will be introducing a motion, number 44, which I believe clarifies the regulation-making authority to make it clear that where water is transferred between Great Lakes watersheds, a regulation may be made requiring the return of that water to the watershed from which it was taken.

There are already provisions in other legislative statutes in the province of Ontario, through the COA process, that I believe address many of the concerns that have been raised through the motion that has been put forward here by Mr. Tabuns.

**The Chair:** Any further debate?

**Mr. Tabuns:** Recorded vote.

**Ayes**

Scott, Tabuns.

**Nays**

Balkissoon, Leal, Oraziatti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to number 26. It's a PC motion.

**Ms. Scott:** I move that paragraph 5 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out "losses of water through consumptive use" at the end and substituting "losses of water."

The amendment is going with our theme about the clarification of the water lost.

**The Chair:** Further debate?

**Mr. Leal:** The philosophical divide remains.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to page 27. It's an NDP motion.

**Mr. Tabuns:** I move that paragraph 5 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in

subsection 1(10) of the bill, be amended by striking out "and losses of water through consumptive use" at the end.

Again, this is an attempt to prevent transfers. I'd like a recorded vote if there's no debate.

**1010**

**The Chair:** Further debate? None, so I'll now put the question.

**Ayes**

Scott, Tabuns.

**Nays**

Balkissoon, Leal, Oraziatti, Van Bommel, Zimmer.

**The Chair:** That does not carry.

We will then move to motion number 28. It's a government motion.

**Mr. Leal:** I move that section 34.6 of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subsections:

"Assessment of cumulative impacts

"(4) If an assessment of cumulative impacts is prepared under article 209 of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005, the minister shall publish the assessment in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993 and invite members of the public to submit written comments to the ministry on what actions should be taken by the government of Ontario in response to the assessment, including comments on whether regulations should be made for the purpose of paragraph 7 of subsection (3) or under clause 75(1.2)(b) and, if so, on the content of those regulations.

"Climate change, etc.

"(5) When the minister publishes an assessment under subsection (4), the minister shall highlight the parts of the assessment that, in his or her opinion, give consideration to climate change and other significant threats to the waters of the Great Lakes-St. Lawrence River basin.

"Government response

"(6) After considering comments submitted under subsection (4), the minister shall publish a statement in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993 that summarizes the actions that the government of Ontario intends to take in response to the assessment."

The agreement requires the regional body to assess cumulative impacts on climate change. This amendment provides an opportunity for the public to respond to the cumulative assessment report and provides comments to the minister on how the government shall respond to the report.

This amendment is in response to comments that were made by the Canadian Environmental Law Association.

**The Chair:** Any further debate?

**Mr. Tabuns:** A question of clarification: This assessment of cumulative impacts is done by the government of Ontario or by another body?

**Mr. Leal:** Does the MOE have a response? Mr. Flagal, please.

**The Chair:** So we're going to hear from a representative of the Ministry of the Environment?

**Mr. Flagal:** My name is James Flagal. Under article 209, there's a commitment by the parties—so it's by the parties—that they will undertake this particular assessment. One of the things the assessment will look at is impacts of climate change and other significant risks to the basin. It is a report that's produced by the parties. Once that report is produced, the minister is then under an obligation to post that report under the Environmental Bill of Rights and invite comments.

**Mr. Tabuns:** So there's not a requirement in the agreement that a regular assessment of cumulative impacts be done; is that correct?

**Mr. Flagal:** There is a requirement; there's a requirement that that sort of assessment be done every five years, and that's in article 209.

**Mr. Tabuns:** Just so I'm clear, then, I would have thought that if it's required and is going forward, then one would say "when an assessment," and what we have here is "if an assessment of cumulative impacts." I'm not trying to be unnecessarily picky, but I think you have to have a regular assessment.

**Mr. Flagal:** In my experience in legal drafting with respect to "if" versus "when," they often mean the same things. So when it's "if," it's all—I hate to say that, but it really is; I remember that in drafting "if" and "when" are often the same things. "When" versus "if" the parties carry out this assessment because they've committed to do so in article 209: once that happens, that minister's obligation is there. Do you see what I mean? Now, I want to be clear. Of course, the legislation couldn't commit the parties to do something because this legislation can only bind the province.

**Mr. Tabuns:** I see.

**Mr. Flagal:** Do you see what I mean? That's why you can't say in the legislation, "We're requiring the parties." That would obviously—

**Mr. Tabuns:** That makes sense to me. Is there a requirement—and I just may have missed it as we went through—in this legislation for Ontario to look at cumulative impacts if the group as a whole does not take action, if, for some reason, they do not get around to doing it, as occasionally happens?

**Mr. Flagal:** I think the answer to that is no. This is the motion that's dealing with that. There's no obligation by the legislation itself saying that the government of Ontario is required to look at cumulative impacts. At the same time, I know, for instance, with respect to the permits-to-take-water-program, when the ministry was preparing things like the permits to take water regulation and, as you also probably know, things that are looked at under the Clean Water Act, there's a requirement there for source protection areas that a water budget be pre-

pared. I find, in speaking to staff, that water budgeting is one of the key tools that's often used to try to determine what cumulative effects are happening to water resources. I guess the answer is, there are other processes that can be pointed to where the government of Ontario does look at cumulative effects on water resources.

**Mr. Tabuns:** Okay. Thank you for your help.

**The Chair:** Thank you, Mr. Flagal. Any further questions or debate? None, so I'll now put the question. Shall the motion carry? All those in favour? Opposed? That carries.

We'll move on to number 29. It's a PC motion.

**Ms. Scott:** I move that section 34.6 of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subsection:

"Return of transferred water

"(4) Despite any other provision of this act, a person who transfers water between Great Lakes watersheds shall ensure that the water is returned to the Great Lakes watershed from which it was taken."

This amendment arises out of the argument brought forward by the Georgian Bay Association and other environmental and resource protection groups that have worked closely with Garfield Dunlop and Norm Miller. We've said this before. We've brought forward the fact that we're seeing dramatic reductions in water levels in some of our most significant lakes. This amendment would enshrine in the legislation the simple notion that water taken from the Great Lakes watershed must be returned.

**The Chair:** Any further debate?

**Mr. Leal:** We won't be supporting this motion at this time. If you look at motion number 44, which we'll be dealing with down the road, I think it addresses many of the concerns that Ms. Scott has articulated.

**The Chair:** Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to number 30. It's a PC motion.

**Ms. Scott:** I move that subclause 34.7(2)(f)(i) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out "reduce the consumptive use of the water" and substituting "reduce the loss of the water."

This is going on the theme from amendment number 1.

**The Chair:** Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

Number 31 is a government motion.

**Mr. Leal:** I move that clause 34.7(2)(f) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

"(f) governing the use and conservation of transferred water, including requiring the holder,

"(i) to implement specified measures to promote the efficient use of the water or reduce the loss of water through consumptive use,

“(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently, and to provide the results of the audit to the director, to other persons or both, or

“(iii) to prepare a water conservation plan and submit it to the director, to amend the plan if required by the director, and to implement the plan; and.”

**1020**

Where a permit to take water is being issued that governs a new and increased transfer of water between the Great Lakes watersheds, this motion would expressly authorize the director to require the permit holder to prepare and implement a water conservation plan. This is a position that has been strongly advocated by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities Initiative, and the Georgian Bay Association.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to number 32. It's an NDP motion.

**Mr. Tabuns:** I move that section 1 of the bill be amended by adding the following subsection:

“(12.1) The Act is amended by adding the following section:

“Conservation plans

“74.1 The government of Ontario shall, with the involvement of interested persons, develop and implement plans for the conservation of water.”

This would further strengthen the act with regard to a requirement for water conservation initiatives.

**The Chair:** Any further debate?

**Mr. Leal:** It is my contention that by just approving government motion 31, we can look after the concerns that have been raised in this NDP motion, as presented by Mr. Tabuns.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? The motion does not carry.

Number 33 is an NDP motion.

**Mr. Tabuns:** I move that section 1 of the bill be amended by adding the following subsection:

“(12.2) Section 75 of the act is amended by adding the following subsection:

“Regulations, conservation

“(0.1) The Lieutenant Governor in Council may make regulations requiring persons to take measures specified in the regulations to conserve water.”

That would provide the right to make regulations about conservation in the Ontario Water Resources Act, and I would say that it's probably consistent with where the government wants to go on this.

**The Chair:** Any further debate?

**Mr. Leal:** It's my position that government motions 11 and 31 cover the intent that has been expressed here by Mr. Tabuns. Certainly, 11 and 31 were the result of addressing stakeholder concerns, particularly those of the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities

Initiative, and our friends in the Georgian Bay Association.

**The Chair:** Any further debate?

**Mr. Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to motion number 34. It's a government motion.

**Mr. Leal:** I move that section 1 of the bill be amended by adding the following subsection:

“(13.1) Section 75 of the act is amended by adding the following subsection:

“Regulations, s. 34(3.1)

“(1.2) The Lieutenant Governor in Council may make regulations prescribing takings of water or classes of takings of water for the purposes of subsection 34(3.1).”

This motion is consistent with section 34 of the Ontario Water Resources Act, to require, by regulation, the grandfathering of water takers to obtain a permit. This will allow the government to have this authority in place when the bill receives royal assent.

**The Chair:** Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on, then, to motion number 35. It's a government motion.

**Mr. Leal:** I move that subsection 1(14) of the bill be amended by striking out the portion before subsection 75(1.2) of the Ontario Water Resources Act and substituting the following:

“(14) Subsection 75(1.2) of the act, as enacted by subsection (13.1), is repealed and the following substituted.”

My explanation is the same as the previous amendment.

**The Chair:** Any further debate? None? I'll now put the question.

All those in favour of the motion? Opposed? That carries.

Motion number 36 is a government motion.

**Mr. Leal:** I move that subsection 1(15) of the bill be amended by striking out the portion before subsection 75(1.2) of the Ontario Water Resources Act and substituting the following:

“(15) Subsection 75(1.2) of the act, as re-enacted by subsection (14), is repealed and the following substituted.”

My explanation is the same as the previous two amendments.

**The Chair:** Any further debate? None. I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to motion number 37, an NDP motion.

**Mr. Tabuns:** I move that subsection 75(1.2) of the Ontario Water Resources Act, as set out in subsection 1(15) of the bill, be amended by adding the following clause:

"(h.1) prescribing a maximum limit on the number of permits that may be issued pursuant to subsection 34.6(2)."

The initiative here is to put a cap on transfers with the intention of protecting the lakes and protecting our political position with regard to our American neighbours.

**Mr. Leal:** We won't be supporting this motion. Some reasoning: The number of permits is not a relevant measure of the potential impact of multiple takings from the watershed. The impact is determined more by the size of the water takings, the source and the cumulative impact of those takings, and I believe that we've moved to address this. We approved amendment 28 previously, which I think addresses the problems and concerns raised in Mr. Tabuns's motion.

**The Chair:** Any further debate?

**Mr. Tabuns:** A recorded vote.

#### Ayes

Tabuns.

#### Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to motion number 38.

**Ms. Scott:** I move that subsection 1(15) of the bill be amended by adding the following subsection to section 75 of the Ontario Water Resources Act:

"Groundwater in Great Lakes watersheds

"(1.5) A regulation under clause (1.2)(g) is not valid unless the description of Great Lakes watersheds recognizes that,

"(a) surface water flows do not necessarily indicate the watershed boundaries for groundwater; and

"(b) the location on the surface from which groundwater is taken is not necessarily within the watershed boundaries for the groundwater."

This amendment was brought forward by the Canadian Bottled Water Association. They contend that Bill 198 does not contain any recognition of the fundamental fact that watersheds are essentially a concept related to surface water; underground sources of water often flow in different directions than does water on the surface. If the goal is to ensure that the water belonging to one watershed remains in that watershed, it is essential to incorporate this.

**Mr. Leal:** We won't be supporting this motion. This amendment would be inconsistent with the treatment of groundwater in the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, specifically article 207, which states: "The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses or withdrawals of surface water and groundwater."

**The Chair:** Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? It does not carry.

We'll move on to motion 39. It's a PC motion.

**Ms. Scott:** I move that subsection 75(1.5) of the Ontario Water Resources Act, as set out in subsection 1(16) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Regulations, charges

"(1.5) The Lieutenant Governor in Council may make regulations establishing and governing charges to recover increased costs that the government of Ontario incurs under this act as a result of the taking or use of water for commercial or industrial purposes, including the costs of the administration of this act in connection with those takings and uses, including."

#### 1030

Again, it was brought forward by the Canadian Bottled Water Association. They have raised serious concerns about the ultimate constitutional nature of this bill, an item which we continue to ask the government to look at and take seriously, which is why I mentioned in committee that the bill should almost have been split into two, the MNR and the MOE sections, because of the industry not being consulted enough on this.

A regulatory charge must be confined to recovering the costs of the governmental authority incurred as a result of the regulated activity. The regulated activity, in this case, is the use of water taken pursuant to the Ontario Water Resources Act for commercial and industrial purposes. As drafted in Bill 198, the authority to impose charges by regulation would be open-ended and is not confined or related in any way to the regulated activity. For example, the act would authorize regulations to charge commercial and industrial users of water taken under the Ontario Water Resources Act for the costs of government advertising campaigns to limit residential waste of water, the cost of programs to subsidize water-saving appliances and the costs of any government program for water conservation under any provincial act whatsoever, such as source water protection programs. Since the act limits the sphere of the regulated activity to commercial/industrial users, only costs directly related to that activity can be reflected in this charge. That was their concern in committee, that there might be a constitutional challenge.

**The Chair:** Further debate?

**Mr. Leal:** The wording of this amendment is not clear in relation to what is meant by "increased costs," and would be too limiting from a regulatory charge perspective.

I'd also like to add that the amendment is also inconsistent with the intent of the proposed charge, which is meant to support the management of water resources in the province of Ontario for both human and ecological uses. Commercial/industrial users would be charged because they contribute to the need for water management programs and derive commercial benefit from a healthy and sustainable water supply. One of the primary goals of the charge is to ensure that industrial/commercial users pay their fair share for the cost the government incurs for water management programs.

**Ms. Scott:** I don't know if it's appropriate if we could get some clarification maybe from legal counsel about when I mentioned the cost of the government advertising campaign to limit the residential waste of water.

**Mr. Becroft:** Your motion would allow these charges to recover increased costs incurred by the government as a result of the taking or use of water for commercial or industrial purposes, including the costs of administration of this act related to those water takings. I'm not sure I can say one way or the other on the specific example of government advertising. Arguably, government advertising in certain circumstances could be part of the administration of this act. It may depend on the type of advertising.

**Ms. Scott:** I think it brings that grey area into—that was kind of an example that we used—what we've been saying from motion 1 about the consumptive uses and the related charges: Is it considered a tax charge? It's an uncertainty out there, especially for our industrial sector, of what they're being charged for. Are they being charged fairly? Do they have a level playing field? I think it all goes back to that use of "consumptive." Okay. Thank you.

**The Chair:** Any further debate on the motion? I'll put the question. Shall the motion carry? It's a Peter Kormos trick. All those in favour? Opposed? It does not carry.

The next motion is number 40, a PC motion.

**Ms. Scott:** I move that subsection 75(1.6) of the Ontario Water Resources Act, as set out in subsection 1(15) of the bill, be amended by,

(a) striking out "for commercial or industrial purposes" in clause (a) and substituting "for commercial or industrial purposes that result in a loss of water"; and

(b) striking out "for commercial or industrial purposes" at the end of clause (b) and substituting "for commercial or industrial purposes that result in a loss of water."

It was brought to our attention that the regulations under this section would have to be reviewed to ensure that they meet the test for a valid regulatory charge. This charge removes the authority to impose patently unrelated charges.

**The Chair:** Any further debate?

**Mr. Leal:** This amendment, as proposed, would allow a charge for a consumptive portion of the water-taking. However, the total commercial-industrial water-taking is what gives rise—apart from the need for water management programs that the government of Ontario carries

out. Commercial and industrial takings may lead to interference with other uses or with ecological functions and, therefore, the entire taking should be subject to the charge, not just the consumptive portion of that charge.

**The Chair:** Any further debate?

**Ms. Scott:** I guess we're going back to our philosophical divide that we have here on the loss of water, if water is returned and the quality—anyway, just to put that on record again.

**Mr. Leal:** And I respect your views on but one side of the philosophical debate we have here this morning.

**The Chair:** Any further debate? None? I'll now put the question. Shall the motion carry? All those in favour? Opposed? That does not carry.

Motion number 41 is a government motion.

**Mr. Leal:** I move that clause 75(1.6)(b) of the Ontario Water Resources Act, as set out in subsection 1(16) of the bill, be amended by striking out "the person takes" at the beginning and substituting "the person takes or distributes."

**The Chair:** Any further debate on this? None? I'll put the question. All those in favour? Opposed? That carries.

The next motion, number 42, is a PC motion.

**Ms. Scott:** I move that clause 76(b.1) of the Ontario Water Resources Act, as set out in subsection 1(20) of the bill, be amended by striking out "reduce the consumptive use of water" at the end and substituting "reduce the loss of water."

This is going back to our philosophical debate again about the clarification of water lost; again brought forward by some of our industries who use water for cooling purposes but return the water in good quality and in the same amounts. They'll be unfairly penalized. Again, going back, we're unclear of the interpretation of "consumptive use" by the other parties to the agreement on the Great Lakes-St. Lawrence basin.

**The Chair:** Further debate? None?

**Ms. Scott:** A recorded vote for that one, just for a change.

## Ayes

Miller, Scott.

## Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

**The Chair:** The motion does not carry.

The next motion is number 43. It's a government motion.

**Mr. Leal:** I move that clause 76(b.1) of the Ontario Water Resources Act, as set out in subsection 1(20) of the bill, be struck out and the following substituted:

"(b.1) requiring the taking of measures to promote the conservation of water, including,

"(i) the preparation of water conservation plans, the submission of those plans to the director, the amendment

of those plans if required by the director, and the implementation of those plans, and

“(ii) other measures to promote the efficient use of water or reduce the loss of water through consumptive use.”

**The Chair:** Any debate?

**Mr. Leal:** This was a position put forward by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities Initiative and the Georgian Bay Association.

**The Chair:** Is there any further debate on the motion? None? I'll now put the question. All those in favour? Opposed? That carries.

We'll move on to motion number 44. It's a government motion.

**Mr. Leal:** I move that section 1 of the bill be amended by adding the following subsection:

“(21.1) Section 76 of the act is amended by adding the following subsection:

“Return of transferred water

“(2) Without limiting the generality of subclause (1)(b)(vi), a regulation under that subclause may require water transferred between Great Lakes watersheds listed in subsection 34.5(2) to be returned to the Great Lakes watershed from which it was taken.”

**The Chair:** Is there any debate on the motion?

1040

**Mr. Norm Miller (Parry Sound–Muskoka):** Sure. We had a motion you voted against a little earlier on that I think was trying to accomplish more or less the same thing. It was number 29. So maybe you could clarify how this is going to protect intra-basin watershed transfers. From the case in my own riding, water levels in Lake Huron and Georgian Bay are a real consideration and a very important issue. I'd like to see water that is taken from a watershed be returned to the same watershed. Is that going to be accomplished with this amendment?

**Mr. Leal:** Mr. Chair, Mr. Miller has raised a very important point. I'll get our folks from MOE or MNR to address that.

**The Chair:** Do we have staff present who could come forward and perhaps—good morning again, Mr. Flagal.

**Mr. Flagal:** Thank you. The motion that the committee had considered earlier was a provision that actually required, in every case, that where water was transferred, it be returned to the source watershed. What this is here is a regulation-making authority. It clarifies an existing regulation-making authority. I want to be really clear about this. Many committee members pointed out, and they recognized, that the agreement does allow, if you can meet the strict criteria, the ability to not return all of the water that you have taken minus the consumptive use. You are required, as you know, to return the water if it is a large transfer. The way the agreement defines large transfer is, “Is this 19 million consumptive per day?” I want to be clear about this. One of the first things that the legislation, the bill that exists now, does is that when it's that large type of transfer, what the bill says is: number 1, the decision on the permit is made by

the minister, not the director; number 2, there's a requirement for regional review, and all the water needs to be returned. That 19 million can be reduced by regulation, so if the government in the future says, “We think more proposals for transfers should go for regional review; we think more proposals should be treated like those large transfers that are now recognized in the agreement,” they can reduce that floor.

What does this motion do? This motion clarifies an existing regulation-making authority. It says that the government can put in place regulations saying, for instance, if your transfer is from the Lake Huron watershed, you are required to return that water. So this gives a flexibility to the government to be able to address that type of concern that we heard at committee. I do know that there was a commitment by the Ministry of Natural Resources that they were going to engage the panel once again, and they were going to discuss the implementing regulations for this particular bill. Therefore, this is one of the things that the panel, plus other affected stakeholders, obviously, can discuss. To give you another quick example, as you've identified, there are situations the bill recognizes where you don't have to return the water. The regulations can obviously step in and take away that particular allowance and say, “No, you do have to return the water.”

**Mr. Miller:** So it gives flexibility, but it's not set in stone and may require water transfers.

**Mr. Flagal:** The regulation can require it. It's “may” because it's obviously a permissive thing, but the regulation can say that if you're taking from a particular watershed or a particular point in the watershed or, as an example, if you're transferring more than 10 million, let's say, or five million or something like that, you are required to return this particular amount minus consumptive use or whatever it is. It's flexibility. So when you identify “may”—the regulation can be mandatory, absolutely, I think is what I'm trying to address.

**Mr. Miller:** Okay. Very good. Thank you.

**Mr. Leal:** Mr. Miller, would you like to hear from the people from MNR who are involved in the Great Lakes basin?

**Mr. Miller:** Certainly.

**Ms. Hunter:** Leith Hunter, legal services branch, MNR. I'm not sure that I can add much—

**The Chair:** I'm sorry, could you just state your name again? I'm sorry.

**Ms. Hunter:** Leith Hunter, legal services branch, MNR. I'm not sure that I can add much to what Mr. Flagal just said to you, but the effect of this will provide flexibility to require return flow where it is not required under the terms of the agreement and it's not required here. It gives the government a bit of ability to require people who are otherwise not required to return flow under the agreement or under this legislation to return flow.

**Mr. Miller:** What about all the smaller users? There's the threshold of 19 million litres per day, I think it is.

**Ms. Hunter:** As drafted, the legislation creates two different categories in terms of size: those transfers which are less than 19 million litres per day consumptive use, and those which are greater. For the ones which are less than 19 million litres per day consumptive use, there are again two categories: some are required to return to the watershed from which they took the water; some are not, although they're required to prove, in a sense, why they cannot.

**Mr. Miller:** Can there be, in the future, new, smaller, less-than-19-million-litre transfers that don't have to be returned to the watershed from which they were drawn?

**Ms. Hunter:** As drafted, there is the flexibility for some smaller users not to return to the watershed. This regulation-making authority would permit that to be changed if it was decided it should be done by regulation.

**Mr. Miller:** So the minister could decide to make regulations to not allow water to be taken out of one watershed and put into another for the smaller users as well.

**Ms. Hunter:** This is a Lieutenant Governor in Council regulation-making authority. The ability to not return could be removed for certain transfers.

**The Chair:** Thank you, Ms. Hunter. Any other debate on this motion? None? I will now put the question. Shall the motion carry? All those in favour? Opposed? Carried.

Members of committee, those are—

**Mr. Leal:** On a point of order, Mr. Chair—

**The Chair:** I know, but we have to first vote on the section, because all those amendments that we debated and discussed so far had to do with section 1 of the bill. I'm now going to put the question. Shall section 1, as amended, carry? All those in favour? Opposed? That carries.

There were no amendments put forward regarding sections 2 and 3. Is there any debate on sections 2 and 3? None? I'll ask the questions together. Shall sections 2 and 3 of the bill carry? All those in favour? Opposed? Carried.

Now we go to section 4. Mr. Leal, you have a government motion regarding section 4 of the bill.

**Mr. Leal:** Yes. I move that subsection 4(2) of the bill be amended by striking out "Subsections 1(6)" at the beginning and substituting "Subsections 1(5.1), (6)."

That is to be consistent with a motion we passed earlier on at the start of our clause-by-clause deliberations this morning.

**The Chair:** Thank you. Any further debate? None? I'll put the question. All those in favour of the motion? Opposed? That carries.

That was the only amendment regarding section 4, so I will now put the question. Shall section 4, as amended, carry? All those in favour? Opposed? Carried.

There were no motions put forward regarding section 5, so shall section 5 carry? All those in favour? Opposed? That carries.

Shall the preamble carry? All those in favour? Opposed? Carried.

Shall the title of the bill carry? All those in favour? Opposed? Carried.

Shall Bill 198, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

Shall we adjourn?

**Mr. Leal:** I just want to thank and acknowledge the work of Mr. Miller, Ms. Scott and Mr. Tabuns—their thoughtful speeches, observations and input—on Bill 198.

**The Chair:** I want to thank staff and—

**Mr. Leal:** And the staff of MOE and MNR, who had done a marvellous job this morning providing detailed responses to questions posed to them.

**The Chair:** I want to thank staff from the clerk's office, legislative counsel and research, and Hansard as well.

We are now adjourned.

*The committee adjourned at 1050.*

## CONTENTS

Wednesday 16 May 2007

<b>Safeguarding and Sustaining Ontario's Water Act, 2007, Bill 198, Ms. Broten /</b> <b>Loi de 2007 sur la sauvegarde et la durabilité des eaux de l'Ontario,</b> <b>projet de loi 198, M<sup>me</sup> Broten .....</b>	<b>JP-1279</b>
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Mr. Peter Tabuns (Toronto–Danforth ND)

#### Also taking part / Autres participants et participantes

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Ms. Leith Hunter, counsel, Ministry of Natural Resources

#### Clerk / Greffière

Ms. Anne Stokes

#### Staff / Personnel

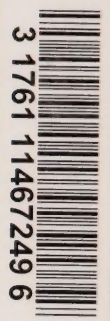
Mr. Doug Beecroft, legislative counsel

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